

Report on the

Board of Dental Examiners
Hoover, Alabama



Department of
Examiners of Public Accounts

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October 20, 2004

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Dental Examiners of Alabama in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Dental Examiners of Alabama, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

CONTENTS PAGE

PROFILE	1
Purpose/Authority	1
Board Characteristics	1
Operations	2
Financial Information	3
SIGNIFICANT ITEMS	4
STATUS OF PRIOR FINDINGS	7
ORGANIZATION	8
PERSONNEL	8
PERFORMANCE CHARACTERISTICS.....	9
FINANCIAL INFORMATION	11
Schedule of Fees	11
Schedule of Operating Receipts, Disbursements, and Balances.....	13
Operating Receipts Vs Operating Disbursements (Chart).....	14
QUESTIONNAIRES.....	15
Board Member Questionnaire	15
Licensee Questionnaire – Dentists	17
Licensee Questionnaire – Hygienists	21
Complainant Questionnaire.....	25
APPENDICES.....	27
Statutory Authority – Code of Alabama 1975.....	27
Title 34 Chapter 9. Dentists And Dental Hygienists.	27
Title 34 Chapter 38. Impaired Professionals' Committee.....	61
Title 20 Chapter 2. Controlled Substances.....	65
Board Members	75

PROFILE

Purpose/Authority

The Board of Dental Examiners licenses and regulates the practice of dentistry in Alabama under authority of the ***Code of Alabama 1975***, Sections 34-9-1 through 34-9-65, 34-38-1 through 34-38-8 and 20-2-2 through 20-2-58. It examines and licenses qualified applicants as dentists or dental hygienists. Upon separate application the board permits qualified dentists to use general anesthesia and parenteral (intravenous) sedation in their practice. The board also administers the Alabama Dental Hygiene Program (ADHP) for the training of dental hygienists.

Board Characteristics

Members	5 dentists 1 dental hygienist.
Term	5 year staggered terms (limited to one term)
Selection	<ul style="list-style-type: none">• Dentist members are elected by currently registered dentists;• Any group of 10 or more licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for a dentist position board on the board.• The hygienist member is elected by currently registered hygienists.• Any group of 10 or more currently registered hygienists may nominate a candidate for the hygienist position on the board.
Qualifications	<ul style="list-style-type: none">• Actively engaged in the practice of dentistry in Alabama for at least five years next preceding the date of their election.• May not be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college• May not receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college.• May not have a financial interest in a commercial dental laboratory or a dental supply business.• May not have been found guilty of any state's dental practice act resulting in his license being placed on probation, suspended or revoked within the five years next preceding the date of his election.

Racial Representation	It is the intent of the Legislature that one (1) member of the board shall be Black. There is one black member on the board.
Geographical Representation	No statutory requirement.
Consumer Representation	No statutory requirement.
Other Representation	None.
Compensation	<p>\$250.00 per day for transacting board business in addition to reimbursement for travel expenses and per diem as allowed for state employees' official travel.</p> <p>The secretary treasurer receives an additional \$400.00 per month.</p>

Operations

Administrator	<p>Mary Ann Wilkinson, R.D.H, Administrative Secretary/ADHP Director. Contract employee, appointed by the board. Current annual salary: \$51,500. Salary set by the board.</p>												
Location	<p>5346 Stadium Trace Parkway Suite 112 Hoover, Alabama 35244</p>												
Type of License	<p>Licenses issued and outstanding as of March 3, 2004:</p> <table> <tr> <td>Dentists</td><td>2,314</td></tr> <tr> <td>Dental Hygienists</td><td>3,521</td></tr> <tr> <td>Controlled Substance</td><td>1,800</td></tr> <tr> <td>General Anesthesia</td><td>120</td></tr> <tr> <td>IV Sedation Permits</td><td>33</td></tr> <tr> <td>Teaching Permits</td><td>29</td></tr> </table>	Dentists	2,314	Dental Hygienists	3,521	Controlled Substance	1,800	General Anesthesia	120	IV Sedation Permits	33	Teaching Permits	29
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General Anesthesia	120												
IV Sedation Permits	33												
Teaching Permits	29												
Renewal	Annually.												

Examinations	Dentists – 3-day license examination prepared and administered by the board each June. Successful completion of the National Board of Dental Examiners’ examination is a prerequisite to taking the Alabama board examination. Dental Hygienists – 2-day examination developed and administered by the board each June.
Continuing Education	Dentists 24 hours annually Hygienists 12 hours annually
Reciprocity	Licensure by reciprocity is authorized by law, but the board, does not license by reciprocity.
Employees	4 full-time and 2 part-time. All contract employees.
Legal Counsel	James S. Ward, Esq., an attorney in private practice.
Subpoena Power	Yes. To compel the attendance of witnesses and the production of records.
Internet Presence	www.dentalboard.org The boards’ web site contains: <ul style="list-style-type: none"> • Statutory authority • Administrative rules • A listing of all current board members • Board’s newsletter • Links to providers of continuing education courses. • Complaint form for download
Attended Board Member Training	Administrative Secretary.

Financial Information

Source of Funds	Licensing and regulatory fees.
State Treasury	No. Funds are maintained in bank accounts.
Unused Funds	Retains unexpended funds.

SIGNIFICANT ITEMS

1. Excessive fee charged for licensure by credentials – In addition to licensure by examination *Code of Alabama 1975*, Section 34-9-10 provides that the board may issue a license by reciprocity or by credentials. The statutory requirements for licensure by reciprocity and licensure by credentials appear similar in all respects with the following exceptions:

- i. Licensure by reciprocity requires that the state (or the District of Columbia) from which the applicant comes accords equal rights to licensed dentists of this state. There is no such requirement for licensure by credentials.
- ii. The fee for issuing a reciprocal license is set by law at not less than fifty dollars (\$50) and not more than one hundred dollars (\$100). There is no restriction on the amount of fee for licensure by credentials.

The board does not issue licenses by reciprocity. It does, however, grant licenses by credentials and charges a \$4,000 fee for a dental license and \$2,000 for a dental hygienist license obtained in this manner. In comparison to other states that issue dental licenses by credentials, and considering what the board actually does to issue the licenses, we believe these fees to be excessive

The board relies on Professional Background Information Services (PBIS), a private company based in Arizona, to verify the applicants' credentials to include education and clinical experience, moral character and criminal background check. The applicants pay a fee directly to PBIS for its services. The board then administers an examination in ethics and requires the applicants appear for a personal interview before the board. The ethics examination consists of fifty multiple choice questions for dentists and twenty for hygienists. The board collects a fee for this process of \$4000 for a dentist examination and \$2000 for a dental hygienist examination.

The following states license dentists and hygienists by credentials. Some boards verify the credentials while others require applicants to submit verification obtained either from a verification service or from credential sources.

Comparative Schedule of Fees for Licensure by Credentials

	Dentist	Hygienist
Alabama	\$ 4,000	\$ 2,000
Arizona	2,200	350
Louisiana	2,000	800
Mississippi	2,000	500
North Carolina	2,000	750
New Mexico	750	300
Oregon	750	750
Minnesota	725	175
Idaho	600	150
Tennessee	560	175
Montana	500	75
Oklahoma	500	100
North Dakota	450	165
South Dakota	425	100
Pennsylvania	35	35
Delaware	10	10
Maryland	10	10
Average (excluding Alabama)	\$845	\$278
Median (excluding Alabama)	\$580	\$170

Source of information: American Association of Dental Examiners Composite, 15th Edition, January 2004

2. The board is collecting less than the statutory minimum for two fees provided by law– The *Code of Alabama 1975*, Section 34-9-16 sets the following fees:

Training permit fee for dental hygienists	\$150 to \$300
Dental hygienist examination material fee	\$50 to \$100

The board charges the following fees:

Dental Hygiene Training Permit	25.00
Dental Hygiene Licensure Exam Materials	25.00

3. The board did not have adequate policies and procedures in effect to ensure compliance with state laws and regulations governing personnel matters.

All staff are employed under annual contracts and are not subject to the provisions of the state's Merit System. However, the contracts provide for the accrual of annual and sick leave in the same manner and at the same rates as the state of Alabama allows its employees. The staff also receives longevity payments, as designated by law for all persons employed in the service of the state. The board does not have a designated personnel officer with responsibility to ensure compliance with state laws and regulations. In addition, each employee maintains his or her own time and attendance records, including leave accrual and usage records. These conditions unnecessarily increase the risk of improper accumulation and recording of leave and improper longevity payments. The following errors were found in personnel transactions:

- Leave was accrued by employees who had not been in pay status long enough to accrue leave. Two employees were accruing annual leave at a higher rate than they were eligible for. Another employee who was due for an increase in the rate of leave accumulation did not receive the increase.
- Longevity payments were made to employees who had not met the minimum service requirement. Payments were also made in amounts that were not correct for the length of time served.
- Sick leave accumulated in former employment was improperly added to an employee's leave balance.
- The board granted an additional six weeks of paid maternity leave for one employee. Maternity leave is not an approved leave benefit for state employees and is not provided for in the employment contracts. State employees use sick leave or annual leave for maternity purposes. The additional paid maternity leave, not already provided for in the employment contract, amounts to extra compensation that does not require the employee to perform additional work. This condition is prohibited by Section 168 of the Alabama Constitution, 1903.

4. There was no evidence that the board is ensuring that its investigators are peace officers. Staff could not produce records showing whether the board's investigators were qualified as peace officers. In addition, the investigators' employment contracts did not provide that the investigators must be Peace Officers' Minimum Standards and Training Act compliant. The *Code of Alabama 1975*, Section 34-9-43 (9) b provides authority for the board to employ peace officers as investigators and to authorize them to act as peace officers in the conduct of their duties. The *Code of Alabama 1975*, Section 20-2-90(a) requires the investigators of the Board of Dental Examiners to act as peace officers and to enforce the controlled substances laws.

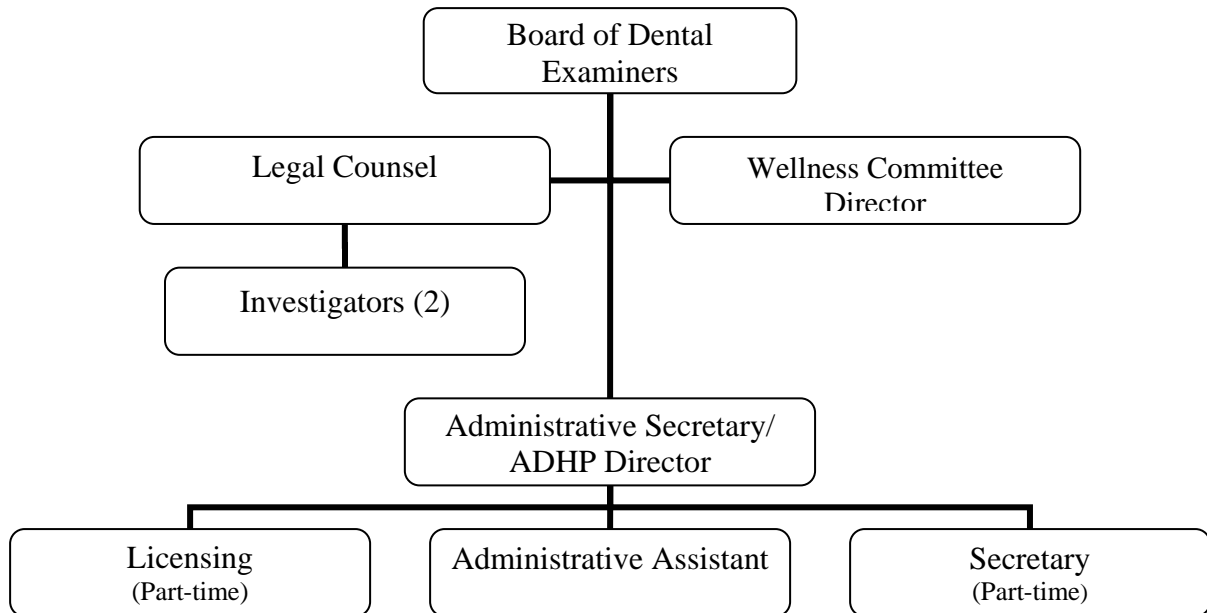
5. Bank statements were not in balance with the board's accounting records. The board uses proprietary software (Quickbooks) as its accounting system and maintains two accounts; an operating account and a money market account in Hoover, Alabama. Bank statements are reconciled to the check register monthly. However, there is a consistent discrepancy between the bank balance and the board's records that remains unresolved and continues to grow. At September 30, 2003, the bank balance exceeded the balance in the board's records by over \$10,000. Staff had not resolved the discrepancy and was unable to explain it. During my review of the board's accounting entries, I noted that the same types of transactions were sometimes not entered into the accounts in a consistent manner.

6. The board is improperly administering its employee pension plan. The board provides an employee pension plan known as the Simplified Employee Pension. The plan carries federal restrictions and requirements that were not adhered to. As a condition of utilizing the plan, the plan must be provided to all employees who meet the prerequisite qualifications. Two qualified employees were excluded from the plan. Also, federal requirements for the plan state that all employees should have a copy of the plan. None did. In addition, staff was unable to produce any records of the plan or agreements documenting that its employees were members of the plan.

STATUS OF PRIOR FINDINGS

There are no unresolved prior findings.

ORGANIZATION



PERSONNEL

The board has four full-time and three part-time employees. All are contract employees. Full-time contract employees receive holidays, annual and sick leave in the same manner as state employees. However, effective with the 2003-2204 employment contracts, the holiday benefit was reduced to six paid holidays and the annual and sick leave benefits were modified to exclude compensation for unused balances at termination of employment.

The board pays 15% of each full-time employee's annual salary into a retirement fund of the employee's choosing under a plan entitled Simplified Employee Pension.

James S. Ward, an attorney in private practice in Birmingham, Alabama, serves as legal counsel to the board. Randolph P. Reaves of Montgomery, Alabama, serves as hearing officer in administrative proceedings.

Schedule of Employees

Classification	Number of Employees	Race	Gender
Administrative Secretary/ADHP Director	1	White	Female
Administrative Assistant	1	White	Female
Licensing Assistant (part-time)	1	White	Female
Secretary (part-time)	1	White	Female
Investigator	2	White	Male
Director, Dental Professionals Wellness Committee	1	White	Male
Total:	<u>7</u>		

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 973

Total Expenditure per Licensee (2002-2003 fiscal Year) – \$126

Number of Persons per Licensee in Alabama and Surrounding States:

	Dentists	Dental Hygienists	Population	Population per Dentist	Population per Hygienist
Alabama	2,314	3,521	4,500,752	1,945	1,278
Florida	10,301	9,621	17,019,068	1,652	1,769
Georgia	4,772	5,298	8,684,715	1,820	1,639
Mississippi	1,403	1,029	2,881,281	2,054	2,800
Tennessee	3,230	3,150	5,841,748	1,809	1,855

Notification to Licensees of Board decisions to Amend Administrative Rules

The board publishes notices of proposed changes in its administrative rules in the *Alabama Administrative Monthly*, a publication of the Legislative Reference Service, and holds public hearings on before adopting the rules in accordance with the Administrative Procedure Act. The board also informs its licensees of changes in rules or statutes through the *Alabama Board of Dental Examiners Newsletter*.

Complaint Resolution

The board may impose any of the following sanctions:

1. Order a license to be
Placed on probation for some specified duration
Suspended, or
Revoked
2. Order a licensee to:
Pay a monetary fine,
Participate in a treatment program for substance abuse
Cease and desist from the action or behavior that was complained about.
Take other recommended corrective action.
3. Issue a letter of concern to a licensee who was not evidentially found guilty of any violation but for whom the board wishes to place on notice that the alleged actions or conduct may not be in accord with the law.

The complainant is notified of the outcome.

Complaint Process

Initial Documentation	The complaint is forwarded to the board attorney and members of the board.
Anonymous Complaints	The board generally does not investigate anonymous complaints but will follow up where sufficient information is provided.
Formal Hearings	Board rules provide for administrative hearing as provided for in the Alabama Administrative Procedure Act.

Review Process The board's attorney reviews each complaint for merit. Where a complaint demands immediate attention to protect a patient, the attorney contacts the investigator and or the director of the Impaired Professionals Committee for immediate intervention. The investigator is authorized to serve immediate suspension notice upon the licensee. Complaints are placed on the next board meeting agenda. Request for an explanation is made upon the licensee complained against. The licensee must respond to the request. Additional investigation may be ordered.

Complaint Disposition Summary:

The following information is obtained from the board's complaint database:

Total Number of Complaints Received (Jan 2001 – Jan 2004)	379
Total Number of Complaints Closed	326
Active Complaints as of 2/4/04	53
No Evidence to Sustain Allegations	69
Hearings	52
Outside Board's Jurisdiction	33
Withdrawn or No Board Action Required	28
[Complainant Updated on Complaint] Status	14
Letter of Concern issued to Licensee	11
Redirected to Other Agencies	8

FINANCIAL INFORMATION

Schedule of Fees

Fee	\$ Amount Charged	\$ Amount Authorized	Code of Alabama 1975, Section
Application	25	25 – 200	34-9-10
Licensure by Credential*	4,000	Board decides	34-9-10(3)(e)
Licensure by Credential - Dental Hygiene*	2,000	Board decides	34-9-10(3)(e)
Dental Licensure Exam	300	100 – 300	34-9-16
Dental Licensure Exam Materials	150	100 – 200	34-9-16
Dental Hygiene Licensure Exam	100	100 – 200	34-9-16
Dental Hygiene Licensure Exam Materials	25	50 – 100	34-9-16
ADHP Training Permit	25	150 – 300	34-9-16

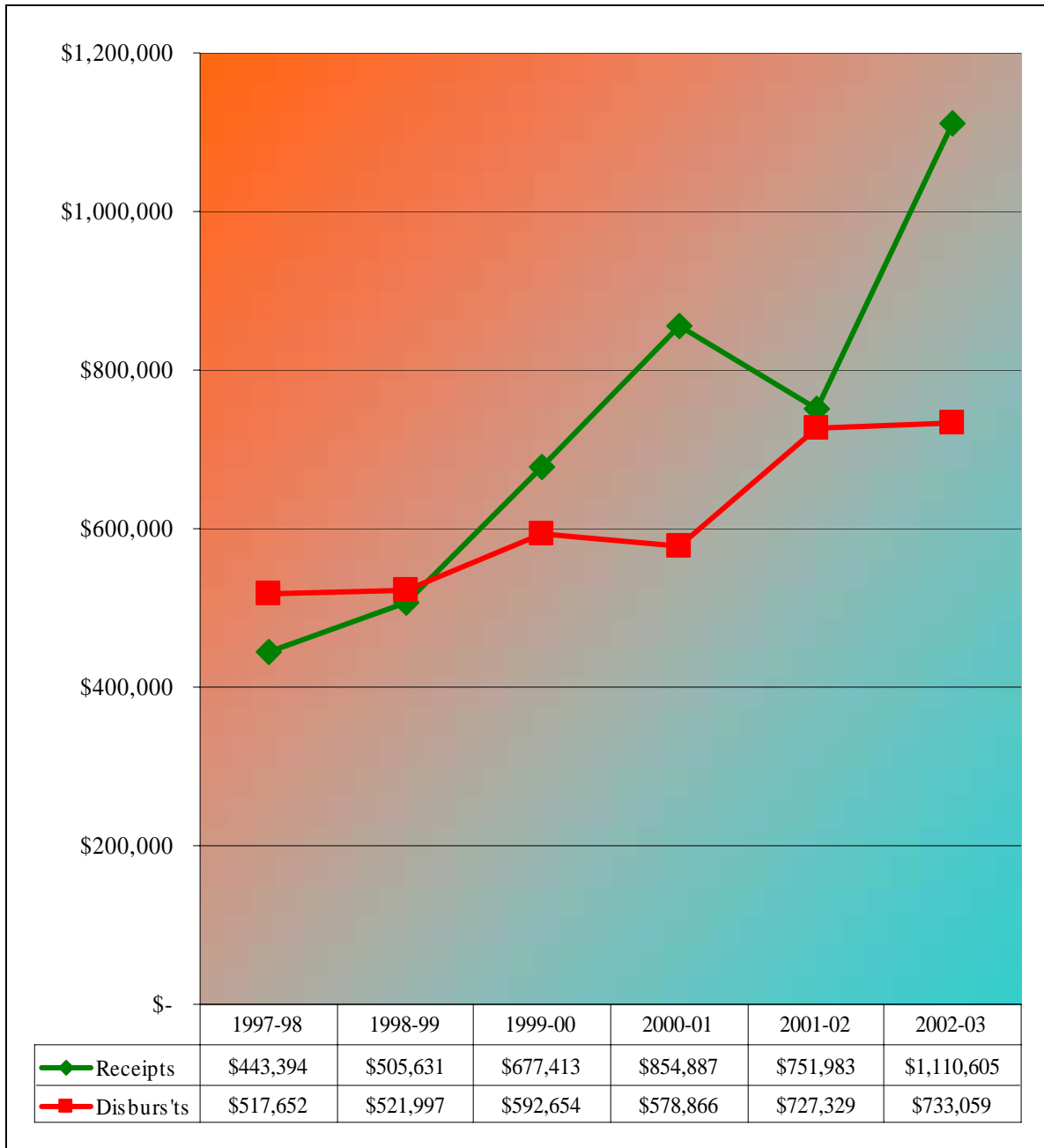
ADHP Academic	200	75 – 200	34-9-16
Initial Certificate – Dental	25	25	34-9-16
Replacement Certificate	25	25	34-9-16
Dental Annual Renewal	125	50 – 150	34-9-15, 34-9-16
Dental Hygiene Annual Renewal	50	25 – 75	34-9-15, 34-9-16
Dental Control Substance Permit	100	50 – 200	34-9-16
Teaching Permit	125	Up to \$150	34-9-8, 34-9-16
Dental Reinstatement Penalty	250	250	34-9-15
Initial Certificate - Dental Hygiene	25	25	34-9-26
Replacement Certificate - Dental Hygiene	25	25	34-9-16
Dental Hygiene Reinstatement Penalty	100	100	34-9-28
General Anesthesia Initial Evaluation Permit	750	Up to \$750	34-9-60
General Anesthesia Permit Renewal	200	Up to \$200	34-9-61
Parenteral Sedation Initial Evaluation Permit	750	Up to \$750	34-9-63
Parenteral Sedation Permit Renewal	200	Up to \$200	34-9-64
ADHP Instruments	185		
ADHP Manual	30		
ADHP Dentoform	250		
ADHP Video	10		
ADHP Instructor Certification Course	50		
Drug Inventory/Dispensing Log	\$2 + Postage		
Disciplinary Penalties and Fines (per count)	up to \$1,000		34-9-18(b)
Assessment of cost of disciplinary proceedings	2,500		34-9-18(b)
Returned Check	5		
Mailing List	25		
Mailing Labels (per page)	0.75		

*Dental license applicants for licensure by credentials pay an additional \$500 fee directly to Professional Background Information Services (PBIS). Dental Hygiene license applicants by credentials pay an additional \$400 directly to PBIS.

Schedule of Operating Receipts, Disbursements, and Balances
October 1, 1998 through September 30, 2003

	2002-03	2001-02	2000-01	1999-00	1998-99
Receipts:					
ADHP	\$ 122,325.10	\$ 127,775.00	\$ 128,705.00	\$ 76,137.00	\$ 50,599.00
Licensing Fees	911,365	549,516	654,760	544,882	391,049
Fines & Penalty	54,156	15,956	5,277		
Interest Income	3,262	15,941	16,628	5,633	9,531
Other Income	3,071	26,130	32,759	34,602	36,809
Privilege License	16,426	16,665	16,758	16,159	17,642
Total Receipts	1,110,605	751,983	854,887	677,413	505,631
Disbursements:					
Personnel Cost	216,770	192,660	109,597	237,066	190,947
Employee Benefit	81,707	86,579	119,064	26,443	50,998
Travel, In-State	25,304	38,056	41,661	37,311	28,922
Travel, Out-of-State	28,861	18,568	17,358	16,728	15,654
Repairs & Maintenance	1,265	3,836	3,134	936	3,493
Rentals & Leases	54,811	57,148	38,957	23,612	20,479
Utilities & Communications	20,590	35,597	25,075	17,732	23,030
Professional Services	160,380	136,851	120,972	122,141	92,588
Supp, Mat'ls, & Oper Exp	135,281	121,829	99,016	110,686	95,885
Transportation Equipt Purch	7,788	11,611	-		
Other Equipment Purchases	304	24,593	4,032	-	-
Total Disbursements	733,059	727,329	578,866	592,654	521,997
Excess (Deficiency) of Receipts over Disbursements	377,546	24,654	276,021	84,759	(16,366)
Cash Balance, October 1	614,877	590,223	314,202	229,443	245,809
Cash Balance, September 30	992,423	614,877	590,223	314,202	229,443

Operating Receipts Vs Operating Disbursements (Chart)



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all six(6) members of the Board of Dental Examiners. Five (5) members responded as follows:

Question #1:

What are the most significant issues currently facing the Board of Dental Examiners and how is the Board addressing these issues?

Board Member #1: We don't have a lot of big problems that aren't being taken care of currently. We always have some disciplinary problems but try to deal fairly with the dentist while still protecting the public (our main mission). On our testing of new hygienists and dentists, we give a good fair exam.

Board Member #2: (1) Conscious sedation – Board is working with ALDAA on acceptable rules and guidelines. (2) Substance abuse among practitioners – establishing a foundation to help with rehab for those who cannot afford treatment. (3) Dental schools and states wanting to eliminate live patients on board exams and also wanting to establish 5th year residency program to replace board exam. The board stands firm on 3rd party examination to protect the public.

Board Member #3: (1) To continue to act in behalf of the general public and to aid and guide the dental profession (dentists and hygienists) with problems within our profession. (2) Substance abuse within our ranks. (3) Advertising problems.

Board Member #4: (1) Substance abuse among dental professionals. (2) Regulation of conscious sedation. (3) Enforcement of Dental Practice Act – timely renewal of licenses. (4) Increased patient complaints concerning quality of care.

Board Member #5: (1) Continuing to improve ADHP. (2) Dealing with advertising issues. (3) Establishing guidelines for oral conscious sedation.

Question #2:

What changes to the Dental Practice Act are needed?

Board Member #1: Passage of an Oral Conscious Sedation Bill will help safety of the public by requiring a dentist using this modality of treatment to undergo training and education courses for the safety of patients.

Board Member #2: In my opinion, the access to care issue concerning patient care for persons in nursing homes and other facilities. A general supervision clause for dental hygienists to provide preventive care for patient of record under strict guideline. We now are under direct supervision only.

Board Member #3: Not to my knowledge. Board does good work.

Board Member #4: Legislation is currently being developed for presentation to the legislature concerning regulation of conscious sedation.

Board Member Questionnaire

Board Member #5: None.

Question #3:

Is the Board adequately funded?

5 Yes 0 No

Additional comments:

Board Member #3: Funded by our resources. No state funds.

Board Member #4: For now.

Question #4:

Is the Board adequately staffed?

4 Yes 1 No

Additional comments:

Board Member #3: (Answered 'Yes') To my knowledge – Board activities growing on yearly basis – will need [not legible] staff.

Board Member #4: (Answered 'No') An administrative staff member is needed to assist [REDACTED] in her duties and to provide redundancy. The board is seeing more casework and the ADHP program is flourishing.

Board Member #5: (Answered 'Yes') With the possible exception of hiring a fulltime ADHP director.

Question #5:

What is the purpose of your fiscal year end balance of unobligated funds?

Board Member #1: The dental board's records (all dentists and hygienists) in the state of Alabama need to be put on a new data base (7,000 or so). Our complete computer systems (in board office) need new data base. The physical facility needs some other items (desks, etc).

Board Member #2: 1. Computer upgrades / integrated data base to compile information and make available to public on web site. 2. Additional office space and furnishings. 3. Calibration for Board exams – materials and classes for examiners, Board-sponsored CE classes.

Board Member #3: To provide large expenditures which may not have been budgeted the previous year – example (1) Large or unknown investigative work – (2) Cases requiring in-depth legal work (3) Replacement of obsolete equipment i.e. cars –

Board Member #4: Capital improvement projects: (1) Computer upgrades, integrated data base for compilation of info in a readily attainable format. (2) Increased [office] space – have hired a new investigator and need room for more records that are being generated. (3) Preparation for board exams, board-sponsored CE, and purchase of materials for these.

Board Member #5: Capital and facility improvements. Computer upgrade. Automobile for investigator.

Licensee Questionnaire – Dentists

Licensee Questionnaire – Dentists

A questionnaire was mailed to one hundred (100) dentists. Sixty-six (66) responded as follows:

Question #1:

Do you think regulation of your profession by the Board is necessary to protect public welfare?

___65___ Yes ___0___ No ___1___ No Opinion

Question #2:

Do you think any of the Board's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

___9___ Yes ___52___ No ___5___ No Opinion

Question #3:

Do you think any of the Board's requirements is irrelevant to the competent practice of your profession?

___13___ Yes ___48___ No ___5___ No Opinion

Question #4:

Are you adequately informed by the Board of changes to and interpretations of Board positions, policies, rules and laws?

___58___ Yes ___6___ No ___2___ No Opinion

Question #5:

Has the Board performed your licensing or renewal in a timely manner?

___66___ Yes ___0___ No ___0___ No Opinion

Question #6:

Do you consider mandatory continuing education necessary for the competent practice of your profession?

___49___ Yes ___11___ No ___6___ No Opinion

Question #7:

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

___60___ Yes ___0___ No ___6___ No Opinion

Licensee Questionnaire – Dentists

Question #8:

What do you think is the most significant issue currently facing your profession in Alabama and what is the Board doing to address the issue?

- [REDACTED] PPO's need to raise their allowable fees which has not been done in over 20 yrs.
- Dealing with [REDACTED]. Having insurance companies try to set the level of health for patients in Alabama. Do not know what they are doing.
- (a) Insurance companies regulating services and fees. (b) The Board has no way to address the issue
- The board is too lenient in the way they allow an impaired dentist (substance abuse) to continue to practice after multiple attempts to rehabilitate. As far as I know they are doing nothing to improve this policy.
- Dental Ads, etc.
- Insurance issues and Medicaid funding.
- Tort reform.
- Failure of the Board to act on behavior issues appropriately. Such issues as drug offenses, in my opinion, are dealt with lightly. Misuse of narcotics should be immediate revocation of a dental license for a dentist or hygienist and a published ban for all other personnel.
- The board is working to control the advertising that is done in the state.
- The board is currently discussing making it more difficult for a General Dentist to prescribe and administer oral sedative.
- My practice is located in Georgia where the biggest issues are Medicaid payments being cut, OSHA and HIPPA regulations. The Georgia Board and organized dentists are lobbying the GA General Assembly to restrict the proposed budget cuts.
- Ensuring the public is treated ethically and safely. The board is not adequately addressing the issue. They are too concerned with minutia such as someone missing a registration deadline by a few days (as is their attorney) and not doing anything about the persons practicing malpractice – and there are a few obvious ones.
- The Board does not address, nor cares about helping individual dentists when problems arise within the profession. Nothing.
- Currently practicing in Florida. I am licensed in 5 states and I must say that Alabama is the fairest and most efficiently run board that I have dealt with.

Licensee Questionnaire – Dentists

- How dental insurance companies give their reasons for denying proposed treatment to patients so that it makes it seem the dentist recommended unnecessary or improper treatment when the real reason is simply the poor coverage of their plan.
- Over regulation of our profession by the Board of Dental Examiners.
- Dental license by credentials. I have been practicing dentistry in the military for the past 20 years and really unsure where the board stands on this matter.
- Frivolous malpractice lawsuits.
- Need random audits of charts and pts to detect malpractice.
- Hygiene – 2-year waiting period as an assistant until can go to school at UAB – a problem for me.
- Insurance.
- The board is addressing the issue of taking a board which will limit the number of dentists in Alabama.
- (1) Quality of dental care. (2) The board is doing very little.
- Non-dentists interfering with the practice of dentistry.
- Drug use among providers and unethical insurance billing. The board is providing fines and supervision of licensing to address the issues.
- Unlicensed practice of dentistry.
- Need to update regulation regarding advertising to be less restrictive – more like medical adv.
- Dictatorial powers by third party insurers. The courts are failing us! Board's hands appear to be tied on this issue.
- License reciprocity and license by credentials – appear to be making headway.
- Unethical advertising.
- Reciprocity in licensure – They approved it.
- The monopoly of [REDACTED] who answers to no one. Our board is powerless against them. Their fees are pathetic. If you do not sign up with them, they will not send checks to our office. They all go to the patient who (not all) will cash checks. I have lost thousands of dollars because of this. There is a lot more about [REDACTED] that needs to be investigated.
- HIPPA compliance.
- The legislature's consideration of restriction on ban of amalgam. I didn't find any information on the board's web site about this.
- Not enough current guidelines and protocols for new practice methods.

Licensee Questionnaire – Dentists

- The attempt to remove amalgam as a restorative material. [Board is] working through legislative hearing to correct the misunderstandings of some of the public.
- Insurance companies dictating the practice of dentistry.
- Insurance companies regulating patient care.
- Access to care for disadvantaged citizens.

Question #9:

Do you think the Board and its staff are satisfactorily performing their duties?

57 Yes

1 No

8 No Opinion

Question #10:

Has any member of the Board or its staff asked for money (other than normal licensing and regulatory fees), services, or any other thing of value in return for performing a Board service for you?

0 Yes

64 No

2 No Response

Licensee Questionnaire – Hygienists

Licensee Questionnaire – Hygienists

A questionnaire was mailed to one hundred (100) registered dental hygienists. Fifty-four (54) responded as follows:

Question #1:

Do you think regulation of your profession by the Board is necessary to protect public welfare?

___ 49 ___ Yes ___ 3 ___ No ___ 2 ___ No Opinion

Additional comments:

- Yes, but with less regulation; train for extended duties. They push rules, and do not seem to apply rules to situations correctly when situation is not text book... being too severe in this.

Question #2:

Do you think any of the Board's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

___ 7 ___ Yes ___ 44 ___ No ___ 3 ___ No Opinion

Additional comments:

- I think ADHP students should be allowed to petition the boards of other states with adequate clinical experience.
- Should allow general supervision for patients of record if RDH, not DH.
- Yes. In the area of nursing home facility where there is no dentist present but the patients still need care.

Question #3:

Do you think any of the Board's requirements is irrelevant to the competent practice of your profession?

___ 6 ___ Yes ___ 43 ___ No ___ 5 ___ No Opinion

Additional comments:

- Yes. CE classes. It is always the same boring teachers. All they are doing is wasting my time and their money.

Question #4:

Are you adequately informed by the Board of changes to and interpretations of Board positions, policies, rules and laws?

___ 45 ___ Yes ___ 4 ___ No ___ 5 ___ No Opinion

Licensee Questionnaire – Hygienists

Question #5:

Has the Board performed your licensing or renewal in a timely manner?

53 Yes 0 No 1 No Opinion

Question #6:

Do you consider mandatory continuing education necessary for the competent practice of your profession?

40 Yes 9 No 5 No Opinion

Additional comments:

- Yes, if informative and interesting.

Question #7:

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

45 Yes 6 No 3 No Opinion

Additional comments:

- I wish there were more locations provided.
- Yes, but only if you are a working hygienist. Information about seminars in your area is difficult to find out about if you are not in the work force. There need to be seminar dates in letters distributed to all hygienists.

Question #8:

What do you think is the most significant issue currently facing your profession in Alabama and what is the Board doing to address the issue?

- Older hygienists are often replaced by younger less experienced personnel. I think it is out of the board's hands. I feel it's a monetary issue.
- I would like to see a national licensing exam developed. I have no idea how feasible this is – I know this is not necessarily a significant issue currently facing hygienists in Alabama but thought it will be a good opportunity to bring it up.
- Incompetent dentists and hygienists that need to be reprimanded and licenses revoked. The board is doing nothing.
- The ADHP. I want to know that the people going into the program are qualified, and properly supervised. My employer didn't check on me a lot. I am unaware of the board's policies on this issue.
- The preceptorship (ADHP). The board is doing nothing.
- To empower hygienists to use dental lasers in accordance to laws and guidelines in other states. I don't know if this issue is being addressed.

Licensee Questionnaire – Hygienists

- Controlled substance abuse seems to be prevalent in our profession among both dentists and hygienists. The board may want to address this issue with stricter penalties.
- I am now retired and living in another state. I no longer practice dental hygiene but I do hope the Alabama Dental Hygiene Program will be allowed to continue. I feel like the “hands on” training is excellent and good dental hygienists come out of this program.
- Training of new hygienists needs more hands on. Better assistance from Board advisor.
- Preceptorship versus 4-year education.
- Whether or not to continue preceptorship (the Alabama dental hygiene program) in the state of Alabama.
- Poorly trained and educated preceptorship hygienists. Should notify and classify hygienists according to education: “DH” for preceptor, RDH for 2yr or more degree hygienist.
- Making sure all persons’ employers have insurance and retirement in place. I don’t know [what the board is doing].
- Compensation being too low. Nothing.
- Alabama needs to be up to par with the rest of the country in regards to dental hygiene.
- Low pay. Nothing.
- ADHP (the Alabama dental hygiene program) is too basic. Needs to be less simplistic and much more in-depth. A more intense perio program would be a plus. The board is not addressing the issue.
- 4-yr – BS schooling for the field as in other states!!
- Regulating the competent practice of currently licensed, practicing hygienists to protect the public and ensure quality treatment.
- I would like to see classes geared to enable us to take the National Board! Some argue about the relevance of dentist in office to practice for the sake of nursing home facilities, etc.

Question #9:

Do you think the Board and its staff are satisfactorily performing their duties?

40 Yes

1 No

13 No Opinion

Licensee Questionnaire – Hygienists

Question #10:

Has any member of the Board or its staff asked for money (other than normal licensing and regulatory fees), services, or any other thing of value in return for performing a Board service for you?

 0 Yes

 54 No

Complainant Questionnaire

Complainant Questionnaire

A questionnaire was mailed to sixty-seven (67) complainants Thirty-two (32) responded as follows:

Question #1:

Was your complaint filed with the Board of Dental Examiners by:

23 Mail 2 Phone 3 Fax 4 Other 0 Unknown

Question #2:

Was receipt of your complaint promptly acknowledged?

27 Yes 3 No 2 Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Board?

2 Immediately 7 Within 10 days 5 Within 20 days

10 Within 30 days 4 More than 30 days

3 Did not respond 1 Unknown

Additional comments:

- Not been contacted yet.

Question #3:

Was the employee who responded to your complaint knowledgeable and courteous?

2 Knowledgeable 6 Courteous 6 Neither

13 Knowledgeable and Courteous 5 Unknown

Additional comments:

- No one responded except by letter.

Question #4:

Did the Board communicate the results of investigating your complaint to you?

14 Yes 16 No 2 Unknown

Additional comments:

- Still not resolved after 3 months.
- Complaint still pending.
- Yes. Vaguely.
- I would like to explain my answer to you on the questionnaire. I could not have asked for more from Mr. [REDACTED]. He was wonderful to deal with. I can never thank him enough and I will never forget his kindness. I do not know the

Complainant Questionnaire

decision the board made. I am aware that Dr. [REDACTED] settled before our hearing. Mr. [REDACTED] told me to fax the Dental Board for the results. I did so the first week in March. I do not have a response at this time. Thank you for everything. I feared this would be one-sided when I filed my complaint. I must say it was anything but that. My sincere gratitude goes out to the Dental Board and especially [REDACTED] [REDACTED]. (Signed).

- No one ever contacted me to follow-up before investigating. I had more to add to my complaint than just the general remarks in the box on the form.

Question #5:

Do you think the Board did everything it could to resolve your complaint?

 6 Yes

 15 No

 11 Unknown

Additional comments:

- Things have been slow.
- Unknown. No reply other than to acknowledge receipts of complaint.

Question #6:

Were you satisfied with your dealings with the Board?

 9 Yes

 17 No

 6 Unknown

Additional comments:

- Not yet – I'm still waiting to find out what happened.
- No. 'Cause no one let me know what was done about it.
- My complaint is over one year old and I have never been given an answer as to the findings. Are you able to provide me with that info? Filed prior to 3/3/03. Received letter from [REDACTED] [REDACTED] [REDACTED] 3/3/03; was told being continued 6/26/03 and still again being continued 5/19/03. Spoke to some guy a couple of months later. I was advised by my current dentist that they obtained my dental records from him. Complaint against [REDACTED] [REDACTED]. Please contact me if you can provide any info from their "investigation". Thank you, [REDACTED] [REDACTED].
- I felt absolutely nothing was done! This dentist needs to be investigated to the fullest! He continues to lie to patients and insurance companies.
- The board ignored my complaint and has yet to deal with it. I am very disappointed.

APPENDICES

Statutory Authority – Code of Alabama 1975

Title 34 Chapter 9. Dentists And Dental Hygienists.

ARTICLE 1. GENERAL PROVISIONS.

§ 34-9-1. Definitions.

Current through End of 2003 Organizational Session

For the purposes of this chapter, the following terms shall have the respective meanings ascribed by this section:

- (1) Annual registration. The documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.
- (2) Board. The Board of Dental Examiners of Alabama.
- (3) Commercial dental laboratory. A technician or group of technicians available to any or all licensed dentists for construction or repair of dental appliances.
- (4) General anesthesia. A controlled state of unconsciousness, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic method.
- (5) License. The grant of authority by the board to a person to engage in the practice of dentistry or dental hygiene.
- (6) License certificate. The documentary evidence under seal of the board that said board has granted authority to the licensee to practice dentistry or dental hygiene in this state.
- (7) Local anesthesia. The elimination of sensations, especially pain in one part of the body by topical application or regional injection of a drug.
- (8) Practice of dentistry across state lines.
 - a. The practice of dentistry as defined in Section 34-9-6 as it applies to the following:
 1. The rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to the dentist or his or her agent.
 2. The rendering of treatment to a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from this state to the dentist or his or her agent.
 3. The holding of himself or herself out as qualified to practice dentistry, or use any title, word, or abbreviation to indicate or induce others to believe that he or she is licensed to practice dentistry across state lines.
 - b. This definition is not intended to include an informal consultation between a licensed dentist located in this state and a dentist located outside this state

provided that the consultation is conducted without compensation or the expectation of compensation to either dentist, and does not result in the formal rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient by the dentist located outside the state.

(9) Private technicians. A technician employed by a dentist or group of dentists for a specified salary.

(10) Sedation. A depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command, produced by a pharmacologic method.

(Acts 1959, No. 100, p. 569, § 34; Acts 1985, No. 85-697, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-2. Legislative findings.

Current through End of 2003 Organizational Session

(a) The Legislature hereby declares that the practice of dentistry affects the public health, safety, and welfare and should be subject to regulation. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the State of Alabama. All provisions of this chapter relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

(b) The Legislature also finds and declares that, because of technological advances and changing practice patterns, the practice of dentistry is occurring with increasing frequency across state lines and that the technological advances in the practice of dentistry are in the public interest.

(c) The Legislature further finds and declares that the practice of dentistry is a privilege. The licensure by this state of nonresident dentists who engage in dental practice within this state is within the public interest. The ability to discipline the nonresident dentists who engage in dental practice in this state is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

(Acts 1959, No. 100, p. 569, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-3. License required to practice dentistry.

Current through End of 2003 Organizational Session

It shall be unlawful for any person to practice dentistry in the State of Alabama except the following:

(1) Those who are now duly licensed dentists, pursuant to law.

(2) Those who may be hereafter duly licensed and who are currently registered as dentists, pursuant to this chapter.

(3) Those nonresident dentists who have been issued a special purpose license to practice dentistry across state lines in accordance with Section 34-9-10. This subdivision shall not apply to those dentists who hold a full, unrestricted, and current license issued pursuant to Section 34-9-10.

(Acts 1959, No. 100, p. 569, § 7; Act 99-402, p. 669, § 1.)

§ 34-9-4. License required to practice dental hygiene.

Current through End of 2003 Organizational Session

It shall be unlawful for any person to practice dental hygiene in the State of Alabama, except:

- (1) Those who are now licensed dental hygienists, pursuant to law; and
 - (2) Those who may hereafter be duly licensed and who are currently registered as dental hygienists pursuant to the provisions of this chapter.
- (Acts 1959, No. 100, p. 569, § 8.)

§ 34-9-5. Penalties.

Current through End of 2003 Organizational Session

Any person who shall practice dentistry, engage in the practice of dentistry across state lines, or practice dental hygiene in this state within the meaning of this chapter without having first obtained from the board a license and an annual registration certificate, when said certificate is required by this chapter, or who violates this chapter, or who willfully violates any published rule or regulation of the board, or who does any act described in this chapter as unlawful, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) for each offense, to be fixed by the court trying the case, and in addition thereto may be, in the discretion of the court, sentenced to hard labor for the county for a period not to exceed 12 months.

(Acts 1959, No. 100, p. 569, § 9; Act 99-402, p. 669, § 1.)

§ 34-9-6. What constitutes practice of dentistry.

Current through End of 2003 Organizational Session

Any person shall be deemed to be practicing dentistry who performs, or attempts or professes to perform, any dental operation or dental service of any kind, gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly, to himself, or to any person in his behalf, or to any agency which is a proprietor of a place where dental operations or dental services are performed; or

(1) Who directly or indirectly, by any means or method, makes impression of the human tooth, teeth, jaws or adjacent tissue, or performs any phase of any operation incident to the replacement of a tooth or any part thereof; or

(2) Supplies artificial substitutes for the natural teeth, and who furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth; or

(3) Who places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed; or

(4) Who professes to the public by any method to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or who diagnoses, or professes to diagnose, prescribe for, professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws, or adjacent structure, or who extracts or attempts to extract human teeth, or remove tumors, abnormal growths or other lesions from the human gums, jaws and adjacent structures, or who operates for harelip or cleft palate; or who treats surgically or mechanically fractures of the human jaw; or who administers local or general anesthetics in the treatment of any dental lesion; or

(5) Who repairs or fills cavities in the human teeth; or

(6) Who uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms, or who gives, or professes to give, interpretations or readings of

dental X-rays or roentgenograms, or X-ray or roentgen therapy; or

(7) Who administers an anesthetic of any nature in connection with a dental operation; or

(8) Who uses the words "dentist," "dental surgeon," "oral surgeon" or the letters "D.D.S.," "D.M.D." or any other words, letters, title or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury or physical condition of the teeth or jaws or adjacent structures; or

(9) Who states, or professes, or permits to be stated or professed by any means or method whatsoever that he can perform or will attempt to perform dental operations, or render a diagnosis connected therewith; or

(10) Who performs any clinical operation included in the curricula of recognized dental colleges; provided, that members of the faculty, teachers, instructors, fellows, interns, residents, dental students and student dental hygienists who are employed by or who are taking courses or instructions at the University of Alabama School of Dentistry or such other dental colleges, hospitals or institutions in Alabama, as may be approved by the board; and provided, that the work of fellows, interns, residents, dental students and student dental hygienists is performed within the facilities of such dental colleges, hospitals and institutions under the supervision of an instructor and as an adjunct to his course of study or training, shall not be required to take examination or obtain a license certificate and renewal license certificate when all of such work, dental operations and activities are confined to his work in said college, hospital or other institution and said work is done without remuneration other than the regular salary or compensation paid by such colleges, hospitals or other institutions.

(Acts 1959, No. 100, p. 569, § 10.)

§ 34-9-7. Exemption of certain practices and operations.

Current through End of 2003 Organizational Session

Nothing in this chapter shall apply to the following practices, acts, and operations:

(1) The practice of his or her profession by a physician or surgeon holding a certificate of qualification as a medical doctor and licensed as such under the laws of this state, provided he or she shall not practice dentistry as a specialty.

(2) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States Army, Navy, Air Force, or other armed services, public health service (provided however, dentists, dental hygienists, and other personnel employed by any public health service which performs dental health care for the general public under programs funded in whole or part by the state or federal government shall be subject to all of the provisions of this chapter and the rules and regulations duly promulgated by the Board of Dental Examiners governing the practice of dentistry and dental hygiene in this state), Coast Guard, or Veteran's Administration.

(3) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Alabama Dental Association or components thereof, or other like dental organizations approved by the board, while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentists duly licensed under this chapter.

(4) The filling of prescriptions of a licensed and registered dentist, as hereinafter

provided, by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances on a model made by or from impressions taken by a licensed and currently registered dentist, to be used or worn as a substitute for natural teeth; provided, that the person or persons, association, corporation, or other entity, shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

(5) The use of roentgen machines or other rays for making radiograms or similar records, of dental or oral tissues under the supervision of a licensed dentist or physician; provided, that the services shall not be advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity, or administering treatments thereto for any disease thereof.

(6) The giving of a general anesthetic by a nurse anesthetist who administers a general anesthetic under the direct supervision of a duly licensed dentist to a patient who is undergoing dental treatment rendered by the dentist.

(7) The use of a nurse in the practice of professional or practical nursing, as defined in Sections 34-21-1 through 34-21-26, by a dentist.

(8) A dentist who engages in the practice of dentistry across state lines in an emergency, as defined by the board.

(9) A dentist who engages in the practice of dentistry across state lines on an irregular or infrequent basis. The "irregular or infrequent" practice of dentistry across state lines is considered to occur if the practice occurs less than 10 times in a calendar year or involves fewer than 10 patients in a calendar year, or the practice comprises less than one percent of the diagnostic or therapeutic practice of the dentist.

(Acts 1959, No. 100, p. 569, § 1; Acts 1967, No. 729, p. 1564, § 1; Acts 1981, No. 81-372, p. 540, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-7.1. Exemption of participation in continuing education course.

Current through End of 2003 Organizational Session

The practice of dentistry by a dentist licensed in another state as a part of participation in a continuing education course conducted, taught, or supervised by the University of Alabama School of Dentistry or any other dental college, hospital, or institution in Alabama which is approved by the board is exempt from the licensing requirements of this chapter.

(Act 2002-512, p. 1318, § 2.)

§ 34-9-8. Teaching permits.

Current through End of 2003 Organizational Session

The board shall annually issue teaching permits to persons who are bona fide members of the faculty of a dental college, if they hold a dental degree but are not licensed and registered to practice dentistry or dental hygiene in the state. The dean of any dental college located in the state shall annually certify to the board the bona fide members of the clinical faculty of the college who are not licensed and registered to practice dentistry or dental hygiene in the state. The board shall issue teaching permits to

applicants upon the certification by the dean. The teaching permits shall be invalid if the holder ceases to be a member of the clinical faculty of the dental college. The dean of any dental college shall promptly notify the board regarding changes in the faculty which affect the eligibility of a faculty member to possess a teaching permit. The holder of a teaching permit shall be subject to this chapter and may perform all clinical operations which a person licensed to practice dentistry or dental hygiene in the state is entitled to perform. The operations may only be performed within the facilities of the dental college and as an adjunct to his or her teaching functions in the college. An annual fee established pursuant to this chapter shall be paid to the board when the teaching permit is issued.

(Acts 1959, No. 100, p. 569, § 12; Acts 1979, No. 79-427, p. 668, § 1(a); Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-9. Certain employment, ownership, and lease arrangements with unlicensed persons prohibited; secured sales of equipment, etc.; employment of dentist to treat employees; unlicensed persons not to select course of treatment, etc.

Current through End of 2003 Organizational Session

(a) No person other than a dentist licensed pursuant to this chapter may:

(1) Employ a dentist, dental hygienist or both in the operation of a dental office;

(2) Place in the possession of a dentist, dental hygienist or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment or offices; or

(3) Retain the ownership or control of dental equipment, material, or office and make the same available in any manner for the use of a dentist, dental hygienist or other agent.

(4) The term "person" as used in this section, shall not in any way pertain to state, county, municipal or city institutions but shall be deemed to include any individual, firm, partnership, corporation or other entity not licensed to practice dentistry in the State of Alabama.

(5) Nothing in this subsection shall apply to bona fide sales of dental equipment, material or office secured by a chattel mortgage or retention title agreement, or to an agreement for the rental of the equipment or office by bona fide lease at a reasonable amount, and under which agreement the licensee under this chapter maintains complete care, custody, and control of said equipment and his practice. Further, nothing in this subsection shall prohibit or restrict persons, firms or corporations from employing or retaining licensed dentists to furnish dental treatment for their employees or dependents of their employees.

(b) The purpose of this section is to prevent a non-dentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment. In addition to the acts specified in subsection (a) no person, other than a dentist licensed in accordance with this chapter, shall enter into a relationship with a person licensed under this chapter pursuant to which said unlicensed person exercises control over the following:

(1) The selection of a course of treatment for a patient, the procedures or materials to be used as a part of such course of treatment, and the manner in which such course

of treatment is carried out by the licensee;

(2) The patient records of a dentist;

(3) Policies and decisions relating to pricing, credit, refunds, warranties and advertising; and

(4) Decisions relating to office personnel and hours of practice.

(c) Any licensed dentist or dental hygienist who enters into any of the arrangements or relationships described in subsection (a) or subsection (b) above with an unlicensed person as defined above, may be subject to any of the penalties set forth in Section 34-9-18.

(Acts 1959, No. 100, p. 569, § 13; Acts 1981, No. 81-372, p. 540, § 2; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-10. Application; special purpose license; licensure by credentials.

Current through End of 2003 Organizational Session

(a) Every person who desires to practice dentistry within the State of Alabama shall file with the secretary-treasurer of the board his or her written application for a license, and furnish satisfactory proof that he or she is 19 years of age, of good moral character, and that he or she is a graduate of a dental school or college approved by the board. The application shall be upon the form prescribed and furnished by the board and verified by the oath of the applicant, accompanied by a fee to be determined by the board, but the fee shall not be less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), and the application shall contain a recent unmounted autographed photograph of the applicant. The board may issue a license without examination other than clinical to an applicant who furnishes satisfactory proof that he or she is a graduate of a dental school approved by the board, if the applicant holds a license under equal requirements to those of this state and has, for five consecutive years immediately prior to the filing of his or her application, been engaged in the legal and ethical practice of dentistry in a state or the District of Columbia, of the United States and furnishes other evidence as to his or her qualifications and lawful practice as the board may deem necessary. No license shall be issued under this section unless the state from which the applicant comes, or the District of Columbia, shall accord equal rights to licensed dentists of this state. The fee for issuing the reciprocal license shall be not less than fifty dollars (\$50) nor more than one hundred dollars (\$100), to be determined by the board.

(b) Notwithstanding the provisions of subsection (a), the board shall issue a special purpose license to practice dentistry across state lines to an applicant who has met the following requirements:

(1) The applicant holds a full and unrestricted license to practice dentistry in any state of the United States or in territories, other than the State of Alabama, in which the individual is licensed.

(2) The applicant has not had any disciplinary action or other action taken against him or her by any state or licensing jurisdiction. If there has been previous disciplinary or other action taken against the applicant, the board may issue a certificate of qualification if it finds that the previous disciplinary or other action indicates that the dentist is not a potential threat to the public.

(3) The applicant submits an application for a certificate of qualification for a special purpose license to practice dentistry across state lines on a form provided by the board, and remits an application fee in an amount established by the board.

(c) A special purpose license issued by the board to practice dentistry across state lines limits the licensee solely to the practice of dentistry across state lines. The special purpose license shall be valid for a period of three years, shall expire on a renewal date established by the board in the third calendar year after its issuance, and may be renewed upon receipt of a renewal fee as established by the board. Failure to renew a license according to the renewal schedule established by the board shall result in the automatic revocation of the special purpose license to practice dentistry across state lines. An applicant may reapply following automatic revocation for failure to renew. The applicant shall meet the qualifications of subsection (b) in order to be eligible for renewal of the license.

(d) Notwithstanding the provisions of this section, the board shall only issue a special purpose license to practice dentistry across state lines to an applicant whose principal practice location and license to practice are located in a state or territory of the United States whose laws permit or allow for the issuance of a special purpose license to practice dentistry across state lines or similar license to a dentist whose principal practice location and license are located in another state. It is the stated intent of this section that dentists who hold a full and current license in the State of Alabama be afforded the opportunity to obtain, on a reciprocal basis, a license to practice dentistry across state lines in any other state or territory of the United States as a precondition to the issuance of a special purpose license as authorized by this section to a dentist licensed in the other state or territory. The board shall determine which states or territories have reciprocal licensure requirements meeting the qualifications of this section.

(e) Licensure by credentials may be utilized to evaluate the theoretical knowledge and clinical skill of a dentist or dental hygienist when an applicant for licensure by credentials holds a dental or dental hygiene license in another state. The board may promulgate rules and regulations relating to licensure by credentials, including fees, in addition to any requirements by law. An applicant for licensure by credentials must meet all of the following:

(1) The dentist or dental hygienist must have been engaged in the active practice of dentistry or dental hygiene or in full-time dental or dental hygiene education for the past five years.

(2) The applicant must hold a current, valid, unrevoked, and unexpired license in a state having examination standards regarded by the Board of Dental Examiners of Alabama as an equivalent to the Alabama standards.

(3) The board of examiners in the state of current practice must verify or endorse that the applicant's license is in good standing without any restrictions.

(4) The dentist or dental hygienist must not be the subject of pending or final disciplinary action in any state in which the individual has been licensed which shall be verified by a query to the National Practitioner Data Bank, the Health Integrity Protection Data Bank, the American Association of Dental Examiners Clearing House for Disciplinary Information or any other pertinent bank currently existing or which may exist in the future.

(5) The applicant must provide a written statement agreeing to be interviewed at the request of the board.

(6) The individual must successfully pass a written jurisprudence examination.

(7) There must be certification from the United States Drug Enforcement

Administration and from the state board of any state in which the applicant is or has been licensed that the DEA permit has not been revoked, suspended, modified, restricted, or limited in any way or that any state controlled substances permit has not been revoked, suspended, modified, restricted, or limited in any way.

(8) The applicant must submit affidavits from two licensed dentists or two licensed dental hygienists practicing in the same geographical area where the applicant currently is practicing or teaching attesting to the applicant's moral character, standing, and ability.

(9) The applicant must provide the board with an official transcript with school seal from the school of dentistry or school of dental hygiene which issued the applicant's professional degree or execute a request and authorization allowing the board to obtain the transcript.

(10) The applicant must be a graduate of a dental or dental hygiene school or college approved by the board.

(11) The applicant must not be the subject of any pending or final action from any hospital revoking, suspending, limiting, modifying, or interfering with any clinical or staff privileges.

(12) The applicant must not have been convicted of a felony or misdemeanor involving moral turpitude or of any law dealing with the administering or dispensing of legend drugs, including controlled substances.

(13) The board may consider or require other criteria including, but not limited to, any of the following:

- a. Questioning under oath.
- b. Results of peer review reports from constituent dental societies or federal dental services.
- c. Substance abuse testing or treatment.
- d. Background checks for criminal or fraudulent activities.
- e. Participation in continuing education.
- f. A current certificate in cardiopulmonary resuscitation.
- g. Recent case reports or oral defense of diagnosis and treatment plans.
- h. Proof of no physical or psychological impairment that would adversely affect the ability to practice dentistry or dental hygiene with reasonable skill and safety.
- i. An agreement to initiate practice within the State of Alabama within a period of one year.
- j. Proof of professional liability coverage and that coverage has not been refused, declined, cancelled, nonrenewed, or modified.

(14) If all criteria and requirements are satisfied and the board determines, after notice and hearing, that the individual committed fraud or in any way falsified any information in the application process, the license may be revoked by the board.

(f) In addition to the requirements for applicants seeking licensure by credentials, an applicant desiring to practice a specialty only, must meet the following requirements:

(1) The specialty must be one in a branch of dentistry approved by the American Dental Association.

(2) The applicant must meet the existing educational requirements and standards set forth by the American Dental Association for that approved specialty.

(3) An applicant who chooses to announce or practice a specialty must limit his or her practice exclusively to the announced special area or areas of dental practice.

(4) If an applicant who is initially licensed by credentials for a specialty practice decides to renounce his or her specialty and practice general dentistry, and the license originally issued did not require a general dental license but rather a specialty license, or the applicant originally passed only a specialty examination, the applicant may not practice general dentistry until he or she successfully passes the board's regular general dentistry examination. However, if the applicant has passed a general dentistry examination or has a general dentistry license, was practicing a specialty, and decides not to continue that specialty and practice only general dentistry, the applicant is eligible for licensure by credentials as a general dentist.

(Acts 1959, No. 100, p. 569, § 14; Acts 1979, No. 79-427, p. 668, § 1(b); Act 99-402, p. 669, § 1; Act 2002-512, p. 1318, § 1.)

§ 34-9-11. Examination of applicants; issuance of licenses.

Current through End of 2003 Organizational Session

When application and accompanying proof as are required herein are found satisfactory, the board shall notify the applicant to appear before it for examination at a time and place to be fixed by the board, and each applicant shall be examined and graded by number in lieu of name. All examinations provided for in this chapter shall be conducted by the board and shall be of such type and character as to test the qualifications of the applicant to practice dentistry. In conducting examinations, each member of the board shall submit his questions to the other board members, and the entire board shall decide whether or not each proposed question is fair and practical. It is provided, however, that the board may recognize any written parts of an examination given by the National Board of Dental Examiners in lieu of such examinations or subject to such examinations as the board may require. Those found qualified by the board shall be granted a license and a license certificate which shall bear a serial number, the full name of the licensee, the date of issuance and the seal of the board, and shall be signed by each member of the board.

(Acts 1959, No. 100, p. 569, § 15; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-12. Recording, reporting requirements.

Current through End of 2003 Organizational Session

(a) Every person granted a license to practice dentistry or dental hygiene in this state by the Board of Dental Examiners of Alabama, as herein provided, shall cause his or her license certificate to be recorded in the office of the judge of probate of the county in which he or she desires to practice before beginning the practice of dentistry or dental hygiene in said county. Any person receiving a license from the board, whether or not intending to immediately engage in the practice of dentistry or dental hygiene in this state, shall cause his or her license certificate to be recorded in the office of the judge of probate in one of the counties of this state within 60 days of the issuance of the license certificate.

(b) Every person issued a special purpose license to practice dentistry across state lines shall be subject to the jurisdiction of the board, and all rules and regulations of the board, including all matters relating to discipline. It shall be the affirmative duty of every special purpose licensee to report to the board in writing within 15 days of the initiation of any disciplinary action against the licensee to practice dentistry by any state or

territory in which the licensee is licensed. In addition, the licensee agrees, by acceptance of the license, to produce any patient records or materials as requested by the board or to appear before the board or any of its committees following receipt of a written notice issued by the board. The notice may be issued by the board. The failure of a special purpose licensee to report, produce records, or appear as set forth above shall subject the licensee to the disciplinary penalties as set forth in Section 34-9-5.

(c) Every person issued a special purpose license to practice dentistry across state lines shall comply with all laws, rules, and regulations governing the maintenance of patient records, including patient confidentiality requirements, regardless of the state where the records of any patient within this state are maintained.

(Acts 1959, No. 100, p. 569, § 16; Act 99-402, p. 669, § 1.)

§ 34-9-13. License and registration certificates to be kept in office of practitioner.

Current through End of 2003 Organizational Session

Every practitioner of dentistry and dental hygiene within the meaning of this chapter shall have in his possession a license certificate and an annual registration certificate in the office wherein he practices.

(Acts 1959, No. 100, p. 569, § 17.)

§ 34-9-14. Change of address generally.

Current through End of 2003 Organizational Session

Every licensed dentist and dental hygienist upon changing his place of practice, whether from one building, city, street address or county to another, shall within 30 days thereafter furnish the secretary-treasurer of the board with the new address. The secretary-treasurer shall acknowledge receipt of change of address within 30 days.

(Acts 1959, No. 100, p. 569, § 18.)

§ 34-9-15. Annual registration; suspension of license for failure to renew registration; waiver of fees; continuing education.

Current through End of 2003 Organizational Session

(a) No person shall practice dentistry in the State of Alabama unless licensed by the board and registered annually as required by this chapter. The secretary-treasurer of the board shall mail to each licensee an initial registration form which shall contain space for the insertion of name, address, date, and number of license certificate, and other information as the board shall deem necessary. The licensee shall sign and verify the accuracy of the registration before a notary public after which he or she shall forward the registration to the secretary-treasurer of the board together with a fee established by the board pursuant to this chapter. Each subsequent registration shall be made upon the form as above prescribed except that it need not be verified. On or before October 1 of each year, every dentist licensed to practice dentistry in the state shall transmit to the secretary-treasurer of the board the completed form prescribed by the board, together with a fee established by the board pursuant to this chapter, and receive therefor the current annual registration certificate authorizing him or her to continue the practice of dentistry in the state for a period of one year. Any license and license certificate previously granted under the authority of this chapter or any prior dental practice act shall automatically be suspended if the holder thereof fails to secure the annual registration certificate before January 1, each year. Any dentist whose license is automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate shall be reinstated by the board upon payment of the penalty fee of two

hundred fifty dollars (\$250) plus all accrued annual registration fees up to a maximum of five years, accompanied with the prescribed form for annual registration of the license. Upon failure of any licensee to file application for the annual registration certificate and pay the annual registration fee on or before November 30, each year, the board shall notify the licensee by registered or certified mail addressed to the last address of record that the application and fee have not been received and that, unless the application and fee are received on or before the first day of January, the license and license certificate shall be automatically suspended. The board shall notify the licensee by registered or certified mail addressed to the last address of record of the effective date of the automatic suspension and the provisions for registration of the license. The board shall waive the annual payment of fees herein provided for and issue a current annual registration certificate to any licensee who, because of age or physical disability, has retired from the practice of dentistry or who is suffering a malady of a lingering or permanent nature. The board by rule shall waive annual registration and the payment of fees while any licensee is on temporary active duty with any of the armed forces of the United States. The waiver of fees herein provided shall be effective so long as the retirement because of age or physical disability or temporary active duty continues.

(b) The board shall adopt, promulgate rules and regulations for the adoption of a program of continuing education for its licensees by October 1, 1991. After that date, the successful completion of continuing education program requirements shall be a requisite for renewal of licenses issued pursuant to this chapter.

(Acts 1959, No. 100, p. 569, § 18; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1; Acts 1979, No. 79-427, p. 668, § 1(c); Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Acts 1997, No. 97-701, p. 1418, § 1.)

§ 34-9-16. Fee schedule.

Current through End of 2003 Organizational Session

The board shall collect fees provided for in this chapter as follows:

Examination fee for dental applicants, to be fixed by the board.....	\$100 to \$300
Examination fee for dental applicants under reciprocal agreements.....	\$50 to \$100
Examination fee for dental hygiene applicants	\$100 to \$200
Dental hygienist examination material fee	\$50 to \$100
Examination fee for dental hygienists	\$20 to \$180
Training permit fee for dental hygienists	\$150 to \$300
Education fee for student hygienists in Alabama dental hygiene program.....	\$75 to \$200
Dental examination material fee	\$100 to \$200
License certificate fee	\$25
Duplicate license certificate fee	\$25
Annual registration certificate fee for dentists	\$50 to \$150
Annual registration certificate fee for dental hygienists	\$25 to \$75
Controlled substance certificate fee for dentists	\$50 to \$200
Teaching permit	up to \$150

(Acts 1959, No. 100, p. 569, § 20; Acts 1965, 3rd Ex. Sess., No. 25, p. 232; Acts 1979, No. 79-427, p. 668, § 1(d); Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Act 98-279, p. 457, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-17. Use of names.

Current through End of 2003 Organizational Session

(a) Any person or persons may practice or offer to practice dentistry in connection with any dental office or offices by or under the use of a name other than their own provided their name or names as they appear on their license certificate granted to him or them as a dentist pursuant to this chapter appear in a reasonably dignified manner either following or beneath any name selected and further provided that such person or persons are personally present in their office or offices operating as a dentist or personally overseeing such operations as they are performed in their office or each of their offices. When an associate in practice is on temporary active duty with the armed forces, his name may continue to appear in connection with the practice of dentistry at any office or offices. Nothing herein shall allow or permit any person or persons to select a name that suggests or implies a nonprofit or charitable activity. The violation of any of the provisions of this subsection by any dentist may subject such dentist to any of the penalties outlined in Section 34-9-18.

(b) It shall be unlawful for a licensee to permit his or her name to appear in any manner on, within or in connection with any office which he has sold to another licensee and from which he has severed his active practice, provided the name of the dentist who sells his office to a licensed dentist may remain in the office for a period not to exceed six months and it shall also be unlawful for the buyer to permit the former owner's name to appear in any manner on, within or in connection with said office, except as herein provided. The violation of any of the provisions of this subsection by any dentist may subject such dentist to the penalties outlined in Section 34-9-18.

(c) Nothing in this section shall be so construed as to prevent two or more licensed dentists from associating together for the practice of dentistry.

(Acts 1959, No. 100, p. 569, § 21; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-18. Grounds for disciplinary action.

Current through End of 2003 Organizational Session

(a) The board may invoke disciplinary action as outlined in subsection (b) hereof whenever it shall be established to the satisfaction of the board, after hearing as hereinafter provided, that any dentist or dental hygienist has been guilty of the following:

(1) Fraud, deceit, or misrepresentation, whether knowingly or unknowingly, in obtaining any license, license certificate, annual registration certificate, money, or other thing of value.

(2) Gross immorality.

(3) Is a menace to the public health or to patients or others by reason of a disease.

(4) Is an habitual user of intoxicants or drugs rendering him unfit for the practice of dentistry or dental hygiene.

(5) Has been convicted for violation of federal or state narcotics or barbiturate laws.

(6) Is guilty of gross negligence in the practice of dentistry or dental hygiene.

(7) Is guilty of employing, allowing, or permitting any unlicensed person or persons to perform any work in his or her office which, under this chapter, can only be legally done by a person or persons holding a license to practice dentistry or dental hygiene.

(8) Willfully or negligently violates the rules of the State Department of Health or of the board regarding sanitation.

(9) Is guilty of division of fees, or agreeing to split or divide the fee received for

dental service with any person for bringing or referring a patient without the knowledge of the patient or his legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another.

(10) Is guilty of professional connection or association with or lending his name to anyone who is engaged in the illegal practice of dentistry.

(11) Conviction in any court of competent jurisdiction of a felony or a misdemeanor involving moral turpitude.

(12)a. A dental hygienist using or attempting to use in any manner whatsoever any prophylactic list, call list, records, reprints, or copies of same, or information gathered therefrom, of the names of patients whom the dental hygienist served in the office of a prior employer, unless the names appear upon the bona fide call or prophylactic list of her present employer and were caused to appear through the legitimate practice of dentistry as provided for in this chapter.

b. A licensed dentist who aids or abets or encourages a dental hygienist employed by him or her to make use of a so-called prophylactic list or the calling by telephone or by the use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist employing the hygienist or nurse.

(13) Pertaining to licensed dentists only, the prescribing, administering, or dispensing of any controlled substances enumerated in Schedules I through V contained in the Alabama Uniform Controlled Substances Act, Chapter 2 of Title 20, or any amendment or successor thereto, for any person not under his or her treatment in the regular practice of his or her profession, or veteran's administration.

(14) Irregularities in billing an insurance company or other third party payer for services rendered to a patient.

(15) Violating any rule or regulation adopted by the Board of Dental Examiners.

(16) Has had his or her license to practice dentistry or dental hygiene from another state suspended or revoked based upon acts similar to those described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation shall be conclusive evidence thereof.

For the purposes of this section irregularities in billing shall include: Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered; falsely reporting treatment dates for the purpose of obtaining payment; falsely reporting charges for services not rendered; falsely reporting services rendered for the purpose of obtaining payment; or failing to advise any third party payer that the copayment provisions of a contract have been abrogated by accepting the payment received from the third party payer as full payment.

(b) When the board finds any dentist or dental hygienist guilty of any of the grounds set forth in subsection (a), it may enter an order imposing one or more of the following penalties:

(1) Refuse to issue the dentist or dental hygienist license or license certificate provided for in this chapter.

(2) Revoke the license of any dentist or dental hygienist.

(3) Suspend the license of any dentist or dental hygienist.

(4) Enter a censure.

(5) Issue an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the dentist or dental hygienist.

(6) Imposition of an administrative fine not to exceed one thousand dollars (\$1,000) for each count or separate offense.

(7) Imposition of restrictions on the scope of practice.

(8) Imposition of peer review or professional education requirements.

(9) Assessment of the costs of the disciplinary proceedings.

(c) Failure to comply with any final order of the board, including, but not limited to, an order of censure or probation, is cause for suspension or revocation of a license.

(d) No disciplinary action as outlined in subsection (b) or (c) hereof shall be invoked or entered except after hearing by the board as provided in this chapter, and such order is subject to judicial review as provided by this chapter.

No order of suspension or revocation provided in this section shall be made or entered except after hearing by the board as provided in this chapter, and the order shall be subject to judicial review as provided by this chapter.

(e) The board may temporarily suspend a special purpose license to practice dentistry across state lines without a hearing on either of the following grounds:

(1) The failure of the licensee to appear or produce records or materials as requested by the board.

(2) The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice dentistry.

Notwithstanding any other provision of law, including the Alabama Administrative Procedure Act, the temporary suspension provided herein shall remain in effect until either the licensee has complied with the request of the board or the disciplinary action pending against the licensee has been terminated in favor of the licensee and the temporary suspension has been terminated by a written order of the board. A special purpose license to practice dentistry across state lines is subject to each of the grounds for disciplinary action provided in Section 34-9-18 in accordance with the procedures of Section 34-9-24 and the Alabama Administrative Procedure Act.

(f) Members of the Board of Dental Examiners, any agent, employee, consultant, or attorney for the board, the members of any committee of dentists or dental hygienists impaneled by the board, shall be immune from suits for any conduct in the course of their official duties with respect to investigations or hearings; provided, that the persons act without malice and in good faith that such investigations or hearings are warranted by the facts, known to them after diligent effort to obtain the facts of the matter relative to the investigations or hearings.

(g) Nothing in this chapter shall be interpreted to limit or restrict the authority of the board to discipline any dentist licensed to practice in this state who violates this chapter while engaging in the practice of dentistry within this or any other state.

(Acts 1959, No. 100, p. 569, § 22; Acts 1981, No. 81-372, p. 540, § 3; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1986, No. 86-498, p. 950, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-19. Dentist advertising; definitions; nature of and responsibility for advertisements; requirements; prohibitions; penalties.

Current through End of 2003 Organizational Session

(a) For the purpose of this section, the following terms shall have the respective

meanings:

(1) Dentist. Any person licensed to practice dentistry in this state pursuant to this chapter, any association or partnership formed for the purpose of practicing dentistry, and any professional corporation or professional unincorporated association formed pursuant to Title 10, Chapter 4 or 10, for the purpose of practicing dentistry.

(2) Routine dental service. A dental service may be considered routine for a dentist if it has the following characteristics:

- a. It is performed frequently in the practice of the dentist.
- b. It is usually provided at a set fee to substantially all patients receiving the service.
- c. It is provided with little or no variance in technique or materials.
- d. It includes all professionally recognized components within generally accepted standards.

(3) Advertisement. An advertisement is information communicated in a manner designed to attract public attention to the practice of a dentist as heretofore defined.

(4) False, Fraudulent, Misleading, or Deceptive. A false, fraudulent, misleading, or deceptive statement or claim is one which:

- a. Contains a misrepresentation of fact.
- b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.
- c. Is intended or is likely to create false or unjustified expectations of favorable results.
- d. Implies unusual or superior dental ability.
- e. Contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(b) A dentist may provide information regarding himself or herself, his or her practice, and fixed fees associated with routine dental services in a dignified manner only in newspapers, magazines, yellow page directories, consumer directories, or comparable publications, or billboards, or in written communication by mail or in broadcast advertising over Federal Communications Commission approved commercial radio or television. Contact by telephone or in person delivery of written materials other than through the Postal Service or similar delivery service is prohibited, except as provided in subdivision (6). In so advertising, a dentist shall not make any false, fraudulent, misleading, or deceptive statements or claims. The dentist shall have ultimate responsibility for all advertisements which are approved by him or her, his or her agents or associates and the dentist shall be responsible for the following:

(1) Broadcast advertisements shall be recorded, approved by the dentist and a recording of the actual transmission shall be retained by the dentist for one year following the final appearance or use of the advertisement and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(2) Written or printed advertisements shall be approved by the dentist and a copy of the publication in which the advertisement is displayed shall be retained by the dentist for one year following the final appearance or use of the advertisement, and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(3) Other forms of advertisement shall be approved by the dentist and the contents and specifications, where applicable, shall be retained by the dentist for one year following the final appearance or use of the advertisement and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(4) Advertising shall include the name of the dentist or dentists and the names of all associates.

(5) Advertising may include the following information:

a. The title of the dentist or degree or designation of any special area of dental practice approved by the American Dental Association in which the dentist has met the existing educational requirements and standards set forth by that association.

b. Office and telephone answering hours, routine dental service. Where complications are likely to arise or where other more expensive services may be required or advised or where special classes of patients such as children are involved, the advertising shall indicate the maximum fee which may be charged.

(6) A dentist may use or participate in the use of professional cards, appointment slips or cards, office signs, signs designating location, letterhead, or similar professional notices, only if they are neither false, fraudulent, misleading, or deceptive.

(c) The following requirements shall be met by a dentist when advertising a routine dental service:

(1) No range of fee may be advertised for routine dental services.

(2) Consultation, treatment planning, or treatment for any routine dental service advertised for a specific fee shall be made available for a minimum of 60 days following the last day of publication or broadcast of that fee or for any shorter period of time if clearly specified in the advertisement.

(3) When a routine dental service is advertised as "free", "no charge", "without charge", or the like, the service shall be made available at no cost for a minimum of 60 days following the date of the last publication or broadcast of the free service or for any shorter period of time if clearly specified in the advertisement.

(4) When a patient accepts the treatment plan for a routine dental service which was advertised by the dentist, any subsequent dental service which is reasonably and foreseeably related to the advertised routine service shall be provided without additional charge, unless the advertisement for the routine dental service includes the following statement:

Additional charges may be incurred for related services which may be required in individual cases.

(5) No advertisement concerning the routine dental services of a dentist shall be: (i) published unless it contains in clearly legible language; (ii) broadcast unless it contains in clearly audible language; or (iii) televised unless it contains in both clearly legible and audible language the following: "No representation is made that the quality of the dental services to be performed is greater than the quality of dental services performed by other dentists."

(6) Advertisements may not include the following:

a. Drawings, multi-colored prints, illustrations, animations, portrayals,

dramatizations, slogans, music, lyrics, or pictures which are false, fraudulent, misleading, or deceptive.

b. Celebrities, celebrity, or personality endorsements.

c. Demonstrations of skills or methods of practicing dentistry.

(7) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services is prohibited.

(8) Testimonials and endorsements, including but not limited to, character references, statements of benefits from dental services received, and expressions of the appreciation for dental services shall not be used in any announcement, publicity, or advertisement.

(9) Promotion of the sale of services, goods, appliances, or drugs in a manner as to exploit the patient for the financial gain of the practitioner or of a third party is prohibited.

(10) Revealing personally identifiable facts, data, or information about a patient obtained in a professional capacity is prohibited.

(d) The dentist is prohibited from including the following when advertising:

(1) Statements claiming superiority in the name of a particular method of treatment shall be considered misleading and are prohibited. The prohibition shall include but not be limited to:

a. Statements that a certain dentist is a specialist or specializes in any branch of dentistry unless that speciality is approved by the American Dental Association and the dentist has met the existing educational requirements and standards set forth by the American Dental Association for that approved speciality. Dentists who choose to announce specialization or the term "practice limited to" shall:

1. Limit their practice exclusively to the announced special area or areas of dental practice, provided at the time of the announcement the dentist or dentists have met in each approved specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association.

2. Not use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when that is not the case.

3. Avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

4. Include an acknowledgement in all advertisements that refer to specialty services indicating whenever the services are being performed by a general dentist.

b. Statements such as "quality dentistry", "quality work", "staff of skilled dentists", "skilled employees", or references to uncertified or unlicensed employees.

c. Statements that a certain dentist uses or may use a special material, drug formula, medicine, or appliance, that is not available or used by other dentists generally.

(2) Statements of superior facilities at a certain office are prohibited; for example, "scientifically equipped", "latest modern equipment", "modern offices", "modern

methods", "modern devices", or any similar expressions.

(3) The advertising of performance of any dental operation without causing pain is prohibited.

(4) False statements including the number of years in practice or in any one location or reference thereto are prohibited.

(5) The omission from signs, or advertising of the names of any associates or employed licensed dentist is prohibited.

(6) Statements of any nature that indicate that a certain dentist does all the work himself or herself, when, as a matter of fact, all or part of the work or service is performed by another, are prohibited.

(7) Statements which indicate the use of any anesthetic, drug, formula, material, method, or system which is falsely advertised or misnamed are prohibited.

(8) Statements that a dentist or a dental group is affiliated with a non-profit or charitable organization are prohibited.

(e) No dentist shall advertise or solicit patients in a manner that is false, fraudulent, misleading, or deceptive in any material respect.

(f) No dentist shall publish or circulate, directly or indirectly, any fraudulent, false, misleading, or deceptive statements as to the skill or methods of practice of himself, herself, or any other person.

(g) In the case of advertising, no dentists shall cause their name or picture to appear in connection or association with any publication, statement, article or presentation connected with or concerning any aspect of dentistry unless the publication, statement, article or presentation is actually authored, written, or prepared by that dentist or unless the publication statement, article, or presentation conspicuously names if other than the dentist, the person or entity who actually authored, wrote, or prepared the same, in whole or in part.

(h) Violation of any provision of this section shall subject the dentist to the penalties outlined in Section 34-9-18, and no order imposing those penalties shall be made or entered except after notice and hearing by the board as provided in this chapter, and such order shall be subject to judicial review as provided by this chapter.

(Acts 1959, No. 100, p. 569, § 23; Acts 1981, No. 81-372, p. 540, § 4; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1997, No. 97-701, p. 1418, § 1.)

§ 34-9-19.1. Dental referral service advertising; definitions; requirements; prohibitions; penalties.

Current through End of 2003 Organizational Session

(a) For purposes of this section, the following words shall have the following meanings:

(1) Advertisement. Information communicated in a manner designed to attract public attention to a referral service, participating dentist, or a practice of dentistry.

(2) Dental referral service. A person, firm, partnership, association, corporation, agent, or employee of any of the foregoing that engages in any business or service for profit that in whole or in part includes the referral or recommendation of persons to a dentist for any form of dental care or treatment.

(3) Dentist. Any person licensed to practice dentistry, any association or partnership formed for the purpose of practicing dentistry and any professional corporation or professional unincorporated association formed pursuant to Chapter 4

or 10 of Title 10 for the purpose of practicing dentistry in this state.

(4) False, fraudulent, misleading, or deceptive statement. A statement or claim having one or more of the following characteristics:

- a. One that contains a misrepresentation of fact.
- b. One that is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.
- c. One that is intended or is likely to create a false or unjustified expectation of favorable results.
- d. One that implies unusual superior dental ability.
- e. One that contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(5) Participating dentist. A dentist who has paid a fee to the dental referral service in order to be included on its referral service.

(b) A dental referral service shall not participate in the advertising of or operate a dental referral service unless all of the following conditions are met:

(1) The patient referrals by the dental referral service result from patient-initiated responses to the service's advertising.

(2) The dental referral service discloses to any prospective patient who makes contact with the service that the participating dentists have paid a fee for participation in the service.

(3) The dental referral service does not impose a fee on the participating dentists dependent on the number of referrals or amount of professional fees paid by the patient to the dentist.

(4) Participating dentists charge no more than their usual and customary fees to any patient referred.

(5) The dental referral service registers with the Board of Dental Examiners of Alabama providing all the following information:

- a. Name.
- b. Street address.
- c. Mailing address.
- d. Telephone number.
- e. Name of registered agent or person responsible for the operation of the dental referral service.
- f. Listing of other states where the dental referral service is registered.
- g. A copy of the standard form contract that regulates its relationship with participating dentists.

(c) Participating dentists shall not enter into a contract or other form or agreement to accept for dental care or treatment a person referred or recommended for the care or treatment by a dental referral service unless the dental referral service meets all the requirements of this section.

(d) A dental referral service that advertises shall include in each advertisement in legible or audible language, or both, a disclaimer containing all the following statements or information that:

(1) The participating dentist of the dental referral service is a dentist who has paid a fee to participate in the service.

- (2) The advertisement is paid for by participating dentists.
- (3) No representation is made about the quality of the dental services to be performed or the expertise of the participating dentists.
- (4) Participating dentists are not more or less qualified than dentists who are not participating in the service.
- (e) Dental referral service advertisements shall not do any of the following:
 - (1) Advertise or solicit patients in a manner that contains a false, fraudulent, misleading, or deceptive statement in any material respect.
 - (2) Publish or circulate, directly or indirectly, any false, fraudulent, misleading, or deceptive statement as to the skill or methods of practice of any participating dentist.
 - (3) Contain a statement or make a recommendation that the dental referral service provides referrals to the most qualified dentists or dental practices.
 - (4) Contain a review process or a screening.
 - (5) Contain qualifications or information verification that misleads the public into thinking a participating dentist has obtained special recognition or joined a selective group of licensed dentists by being a participating dentist in the dental referral service.
- (f) A violation of Sections 34-9-15, 34-9-19, 34-9-28, or this section shall subject a participating dentist to possible administrative disciplinary actions outlined in Section 34-9-18, after notice and hearing by the Board of Dental Examiners of Alabama and the opportunity for judicial review as provided in this article.
(Acts 1997, No. 97-701, p. 1418, § 2.)

§ 34-9-20. Unauthorized advertising, selling or offering of dental services and appliances; injunctions.

Current through End of 2003 Organizational Session

Any person, which word when used in this section shall include all legal entities not licensed to practice dentistry in this state, who shall advertise in any manner to the general public that he can or will sell, supply, furnish, construct, reproduce or repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth, or for the regulation thereof, shall be guilty of a misdemeanor, and the circuit courts shall have jurisdiction to enjoin such person from so doing.

(Acts 1959, No. 100, p. 569, § 24; Acts 1981, No. 81-372, p. 540, § 5.)

§ 34-9-21. Employing services of commercial dental laboratory or private technician.

Current through End of 2003 Organizational Session

Every duly licensed and registered dentist who employs the services of a commercial dental laboratory or private technician for the purpose of constructing, altering, repairing or duplicating any denture, plate, crown, partial plate, bridge, splint, orthodontic or prosthetic appliance shall be required to furnish said commercial dental laboratory or private technician an impression or model taken by said dentist when necessary, together with a prescription setting forth the following:

- (1) The name and address of the commercial dental laboratory or private dental technician;
- (2) The patient's name or identification number, and if a number is used the patient's name shall be written upon the duplicate copy of the prescription retained by the dentist;

- (3) The date on which the prescription was written;
- (4) A description of the work to be done, with diagram if necessary;
- (5) A specification of the type and quality of materials to be used; and
- (6) The signature of the dentist and his license number.

Such prescription shall be made in duplicate form. The duplicate copy shall be retained in a permanent file for a period of two years by the dentist, and the original copy shall be retained on a permanent file for a period of two years by the commercial dental laboratory or private technician. Such permanent file of prescriptions to be kept by such dentists, commercial dental laboratory or private technician shall be open to inspection at any reasonable time by the board or its duly constituted agent. Failure of the dentist, commercial dental laboratory or private technician to keep such permanent records of prescriptions which are identifiable with each denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance shall be prima facie evidence of a violation of this chapter and shall constitute and be punishable as a misdemeanor.

(Acts 1959, No. 100, p. 569, § 25.)

§ 34-9-22. Sale, offer to sell, procurement or alteration of diploma or certificate; fraud or cheating.

Current through End of 2003 Organizational Session

Whoever sells or offers to sell a diploma conferring a dental degree, or a license certificate or annual registration certificate granted pursuant to this chapter or prior dental act, or procures such diploma or license certificate or annual registration certificate with intent that it shall be used as evidence of the right to practice dentistry or dental hygiene as defined by law, by a person other than the one upon whom it was conferred or to whom such license certificate or annual registration certificate was granted, or with fraudulent intent alters such diploma or license certificate or annual registration certificate, or uses or attempts to use it when it is so altered shall be deemed guilty of a misdemeanor. The board may impose any of the penalties outlined in Section 34-9-18 against any person found guilty of making a false statement or cheating, or of fraud or deception either in applying for a license, a license certificate or annual registration or in taking any of the examinations provided for herein.

(Acts 1959, No. 100, p. 569, § 26; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-23. Title and letters signifying degree.

Current through End of 2003 Organizational Session

Any licensed dentist of this state being a graduate of a reputable dental school or college recognized by the board shall have the right to use the title "doctor" or abbreviation thereof before his name, or appended to his name the letters "D.D.S.," "D.M.D." or equivalent letters signifying the dental degree conferred upon him.

(Acts 1959, No. 100, p. 569, § 27.)

§ 34-9-24. Statement of charges and notice of hearing before revocation or suspension of license.

Current through End of 2003 Organizational Session

No action to revoke or suspend a license shall be taken until the licensee has been furnished a statement in writing of the charges against him, together with a notice of the time and place of the hearing. The statement of charges and notice shall be served upon the licensee at least 20 days before the date fixed for hearing, either personally or by registered or certified mail sent to his last known post-office address.

(Acts 1959, No. 100, p. 569, § 29; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1.)

§ 34-9-25. Judicial review of orders of board.

Current through End of 2003 Organizational Session

From any order of the board imposing any of the penalties found in Section 34-9-18, any party affected thereby may bring an action in the circuit courts to set aside said order on the ground that same is unlawful or arbitrary.

(Acts 1959, No. 100, p. 569, § 30; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-26. Examination, qualifications, licensing, etc., of dental hygienists.

Current through End of 2003 Organizational Session

No person shall practice as a dental hygienist in this state until such person has passed an examination given by the board under rules and regulations as the board may promulgate. The fee for examination shall be not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200), and the license certificate fee shall be twenty-five dollars (\$25). The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination and have been found qualified by the board. The license certificate and annual registration certificate shall be displayed in the office in which the dental hygienist is employed. No person shall be entitled to a license and license certificate unless the person is 19 years of age and of good moral character. Each applicant for examination and license as a dental hygienist shall be a graduate of a school of dental hygiene which has been approved by the board, or in lieu thereof, shall have served at least one year as a dental assistant and shall have served at least one year as a dental hygienist trainee under a training permit issued by the board to a qualified dentist practicing in this state in accordance with the dental hygienist training program established by the Board of Dental Examiners of Alabama. Any person practicing in violation of this section shall be guilty of a misdemeanor, and the board may impose the penalties outlined in Section 34-9-18 for such violation.

(Acts 1959, No. 100, p. 569, § 35; Acts 1979, No. 79-427, p. 668, § 1 (e); Acts 1985, No. 85-697, p. 1120, § 1; Act 2001-269, p. 328, § 3.)

§ 34-9-27. Employment, supervision and practice of dental hygienists.

Current through End of 2003 Organizational Session

A dental hygienist shall work only under the direct supervision of a duly licensed dentist practicing in this state. Dental hygienists may take, develop and mount oral X-rays; remove calcareous deposits, accretions or stains from the teeth, perform any intra-oral procedures allowed by rule or regulation of the Board of Dental Examiners of Alabama and assist a licensed dentist in his or her practice. Any person licensed by the board under this section who has completed the curriculum for dental hygienists at a dental school approved by the board shall have the right to use the title registered dental hygienist or the abbreviations thereof, "R.D.H." appended to his or her name signifying the license conferred. The board may impose any of the penalties outlined in Section 34-9-18 against any dentist who shall permit any dental hygienist working under his or her supervision to perform any operation other than those permitted under the provisions of this section, and may impose the penalties outlined in said Section 34-9-18 against any dental hygienist who shall perform any operation other than those permitted under this section.

(Acts 1959, No. 100, p. 569, § 36; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-28. Dental hygienist to notify board of change of address or employer and procure registration certificate; reinstatement of certificate; form and method of annual registration.

Current through End of 2003 Organizational Session

It shall be the duty of all licensed dental hygienists to notify the secretary-treasurer of the board of any change of address or employer and have issued to them an annual registration certificate by the board. Any dental hygienist whose license shall be automatically suspended by reason of failure, neglect or refusal to secure the annual registration certificate may be reinstated by the board upon payment of the penalty fee of one hundred dollars (\$100) plus the current year's registration fee. The form and method provided for in Section 34-9-15 shall apply to the annual registration of dental hygienists. (Acts 1959, No. 100, p. 569, § 37; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1; Acts 1997, No. 97-701, p. 1418, § 1.)

§ 34-9-29. Injunctions against violations of chapter.

Current through End of 2003 Organizational Session

When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in the circuit court for an injunction, and said court of this state may enjoin any person from violating this chapter regardless of whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted. For purposes of this section, person shall be deemed to include any individual, firm, partnership, corporation, professional association, professional corporation or other entity. (Acts 1959, No. 100, p. 569, § 31; Acts 1985, No. 85-697, p. 1120, § 1.)

ARTICLE 2. BOARD OF DENTAL EXAMINERS.

§ 34-9-40. Creation; composition.

Current through End of 2003 Organizational Session

(a) In order to accomplish the purposes and to provide for the enforcement of this chapter, there is hereby created the Board of Dental Examiners of Alabama. The board is hereby vested with the authority to carry out the purposes and enforce the provisions of this chapter. On June 24, 1959, the members of the present board now in existence shall hold office for the remainder of their respective terms for which they have been elected and thereafter until their successors are elected and qualified and shall constitute the board under this chapter. The board shall consist of five dentists who shall have been actively engaged in the practice of dentistry in the State of Alabama for at least five years next preceding the date of their election and one dental hygienist as provided in subsection (b). No member of the board shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or a dental supply business. All elections shall be conducted by the board. Any group of 10 or more licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for the position of board member by submitting a petition bearing their signatures to the secretary of the board not later than the first day of July in the year of the election. The board shall cause the election ballots to be mailed not later than September 1 in the year of the election to all the licensed dentists residing and practicing in the state and currently registered as prescribed by law, along with the annual

registration form for the forthcoming fiscal year. Both annual registration form and ballot shall be returned to the secretary of the board on or before October 1 each year, ballots being nullified unless accompanied by completed annual registration form and annual registration fee. Three members of the board shall be present at the canvassing of the ballots. Any candidate receiving a majority of the votes shall be declared elected to the board and will take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to the run-off election to be mailed on or before October 15 of the election year to all the licensed dentists residing and practicing in the state and currently registered as prescribed by law, and the ballots pertaining to the run-off election shall be received by the secretary of the board on or before the first day of November in the year of the run-off election. In the event of a run-off election, the candidate receiving the largest number of votes in the run-off election shall be declared elected to the board and shall immediately take the oath of office and begin his or her term of office. Each member so elected shall hold office for a period of five years, which terms shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and until his or her successor is elected and qualified, and the member so elected shall not at the expiration of the term be eligible to succeed himself or herself. It is the intent of the Legislature that one (1) member of the board shall be Black. Vacancies on the board shall be filled by the board by the appointment of the immediate past member of the board, and if for any reason the immediate past member of the board is unable to accept the appointment, then the board shall fill the vacancy by a unanimous vote of the other board members by the appointment of some other past member of the board. Members of the board shall be removed by a two-thirds vote of the registered dentists in the state for neglect of duty or any just cause, by petition to the secretary of the board by 10 percent of the licensed dentists in the state. On or before July 1, 1962, the board shall send a copy of this section to all licensed dentists in the state.

(b)(1) One member of the board shall be a licensed dental hygienist. The dental hygienist member shall be of good moral and ethical character and shall have been actively engaged in the practice of dental hygiene in the State of Alabama for at least five years preceding the date of election. No dental hygienist member shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or dental supply business while serving on the board.

(2) The dental hygienist member shall be elected as follows:

a. Any group of 10 or more licensed dental hygienists, residing and practicing dental hygiene in the State of Alabama, may nominate a candidate for the dental hygienist position by submitting a petition bearing their signatures to the secretary of the board no later than the first day of July in the year of an election. The board shall cause election ballots to be mailed no later than September 1 in the year of an election to all the licensed dental hygienists residing and practicing in the state and currently registered as prescribed by law. The ballot shall be

returned to the secretary of the board on or before October 1 each year, and the ballots will be nullified unless the voter has complied with Section 34-9-28, concerning annual registration.

b. Three members of the board shall be present at the canvassing of the ballots. Any candidate receiving a majority of the votes shall be the dental hygienist member and shall take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to any run-off election to be mailed on or before October 15 of the election year to all licensed dental hygienists residing and practicing in the state and currently registered as prescribed by law, and the ballots pertaining to the run-off election shall be received by the secretary of the board on or before the first day of November in the year of any run-off election. In the event of a run-off election, the dental hygienist receiving the largest number of votes in the run-off election shall be declared elected to the board and shall immediately take the oath of office and begin his or her term of office.

c. All elections as described above shall be conducted by the board.

(3) The dental hygienist member shall be removed by a two-thirds vote of the registered dental hygienists in the state for neglect of duty or any just cause by petition to the secretary of the board by 10 percent of the licensed dental hygienists in the state.

(4) The dental hygienist member shall hold that position for a period of five years, which term shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and continue until his or her successor is elected and qualified, and the member so elected shall not at the expiration of the term be eligible to succeed himself or herself. If a vacancy occurs in the position of dental hygienist, the unexpired term shall be filled by the board by the appointment of the immediate past dental hygienist member. If for any reason the immediate past dental hygienist member is unable to accept the appointment, then the board shall fill the vacancy by a unanimous vote of the other board members by the appointment of some other past dental hygienist member. If a vacancy occurs and there is not an immediate past dental hygienist member or other past dental hygienist member, the vacancy shall be filled by a unanimous vote of the board by the appointment of some otherwise qualified dental hygienist.

(5) The dental hygienist member shall advise the board on matters relating to dental hygiene and shall only be permitted to vote on matters relating to dental hygiene. The board shall provide the dental hygienist member with timely notice of all board meetings and the dental hygienist member shall be allowed to attend all meetings unless prohibited by law from attendance at any disciplinary hearings. The board shall not adopt any rule relating to the practice of dental hygiene unless the proposed rule has been submitted to the dental hygienist member for review and comment at least 30 days prior to its adoption. The dental hygienist member shall be entitled to the same compensation and expenses paid to dentist members of the board pursuant to Section 34-9-41.

(c) Any dentist or dental hygienist who has been found guilty of violating this chapter

or any provision of a dental practice act of any other state and as a result his or her license was revoked, suspended, or placed on probation or who has been convicted of a felony, shall not be eligible for election or membership on the board for a period of five years from the date of the final order or consent order.

(Acts 1959, No. 100, p. 569, § 2; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1993, No. 93-159, p. 241, § 3; Acts 1997, No. 97-155, p. 202, § 3; Act 99-402, p. 669, § 1.)

§ 34-9-41. Officers of board; seal; meetings; quorum; compensation and expenses; fees.

Current through End of 2003 Organizational Session

The board shall annually elect from its membership a president, vice-president and secretary-treasurer and may employ a secretary who is not a member of the board, and it shall not be necessary that the secretary be a dentist. The board shall have a common seal. The board shall hold an annual meeting in Birmingham at the University of Alabama School of Dentistry as soon as practical after the graduation exercises of the dental school for the purpose of examining applicants for a license to practice dentistry and dental hygiene or at such other times and places as the board may designate for the purpose of transacting its business and examinations. Three members of the board shall constitute a quorum for the transaction of business at any meeting except that in conducting hearings involving any of the penalties outlined in Section 34-9-18 and examinations of licensure, five members of the board shall be present. In conducting examinations or hearings involving any of the penalties outlined in Section 34-9-18, a majority of the board may appoint any former member of the board and such other licensed practicing dentists who for such purposes shall have all the powers and privileges of such office as a regular board member possesses. Out of the funds of the board the members thereof shall receive as compensation a sum to be fixed by the board for each day actively engaged in the duties of their office, and in addition board members shall receive the same per diem and travel allowance as is paid by law to state employees for each day actively engaged in the duties of their office. The secretary-treasurer shall receive such compensation as may be fixed by the board, which shall be in addition to his per diem and expenses, provided no per diem or expenses shall be allowed unless his duties require his absence from his office. The secretary shall receive such compensation as may be fixed by the board. The secretary-treasurer shall be custodian of all property, money, records and the official seal of the board. All money received by the board under this chapter shall be paid to and received by the secretary-treasurer of the board. The secretary-treasurer shall deposit to the credit of the board all funds paid to the board in a bank selected by its members. The board is authorized to expend such funds as shall be necessary to enforce the provisions of this chapter; to pay salaries, expenses and other costs herein provided; to promote the arts and science of dentistry; and for such other purposes as the board shall consider to be in the best interest of dentistry in this state. All the costs herein provided for shall be paid by checks drawn by the secretary-treasurer and countersigned by the president of the board; except the board may authorize the administrative secretary to sign checks for costs that do not exceed a monetary limit to be set by the board in its rules. Should the property be other than money, the secretary-treasurer shall provide for the safekeeping thereof for the use of the board. All money, including license fees, annual renewal license certificate fees, examination fees and any and all other fees and receipts under the provisions of this chapter, are hereby

appropriated to the Board of Dental Examiners to be used as herein provided.
(Acts 1959, No. 100, p. 569, § 3; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1979, No. 79-427, p. 668, § 1 (f); Acts 1985, No. 85-697, p. 1120, § 1; Acts 1989, No. 89-407, p. 868, § 3.)

§ 34-9-42. Bond of secretary-treasurer of board; annual report and audit; national affiliation.

Current through End of 2003 Organizational Session

The secretary-treasurer of the board shall give bond in such sum as may be prescribed by the board, conditioned to faithfully and honestly discharge the duties of said office according to law, which bond shall be made payable to the Board of Dental Examiners of Alabama and held in the custody of the president of said board. The secretary-treasurer of the board shall compile an annual report which shall contain an itemized statement of all money received and disbursed and a summary of the official acts of the board during the preceding year, and said report shall have attached thereto a certified report and audit made by a certified public accountant of the State of Alabama. A copy of said report and audit shall be filed of record in the office of the Department of Finance of the State of Alabama, and a copy shall be retained by the secretary-treasurer to be rendered upon request, to the dentists at large in the State of Alabama. The board may affiliate with the American Association of Dental Examiners, may pay dues to the said association and may send all members of the board to the meetings of said association. Such delegates may receive the per diem herein provided for attending such meetings and reimbursement for necessary expenses audited and allowed by the board.

(Acts 1959, No. 100, p. 569, § 4; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1981, No. 81-372, p. 540, § 6.)

§ 34-9-43. Powers and duties generally.

Current through End of 2003 Organizational Session

The board shall exercise, subject to this chapter, the following powers and duties:

- (1) Adopt rules for its government as deemed necessary and proper.
- (2) Prescribe rules for qualification and licensing of dentists and dental hygienists.
- (3) Conduct examinations to ascertain the qualification and fitness of applicants for licenses as dentists and dental hygienists.
- (4) Make rules and regulations regarding sanitation.
- (5) Formulate rules and regulations by which dental schools and colleges are approved, and formulate rules and regulations by which training, educational, technical, vocational, or any other institution which provides instruction for dental assistants, dental laboratory technicians, or any other paradental are approved.
- (6) Grant licenses, issue license certificates, teaching permits, and annual registration certificates in conformity with this chapter to such qualified dentists and dental hygienists.
- (7) Conduct hearings or proceedings to impose the penalties specified in Section 34-9-18.
- (8)a. Employ necessary persons to assist in performing its duties in the administration and enforcement of this chapter, and to provide offices, furniture, fixtures, supplies, printing, or secretarial service to these persons and expend necessary funds.
 - b. Employ an attorney or attorneys, subject to the approval of the Attorney General, to advise and assist in the carrying out and enforcing of the provisions of this chapter.

(9)a. Investigate alleged violations of this chapter and institute or have instituted before the board or the proper court appropriate proceedings regarding the violation.

b. Authorize and employ investigators who comply with the Peace Officers' Minimum Standards and Training Act to exercise the powers of a peace officer in investigating alleged violations of the drug or controlled substances laws by persons licensed pursuant to this chapter, including the powers of arrest and inspection of documents. These investigators shall not be paid a subsistence allowance by the board.

(10) Adopt rules and regulations to implement this chapter.

(11) Publish annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act and to publish at least every two years a list of all persons licensed to practice under this chapter.

(12) Attend meetings, seminars, work shops, or events that may improve the function and efficiency of the board or improve the ability of the board to enforce and administer this chapter.

(Acts 1959, No. 100, p. 569, § 5; Acts 1981, No. 81-372, p. 540, § 7; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-44. Records to be kept by secretary-treasurer; copies and certificates as evidence.

Current through End of 2003 Organizational Session

The secretary-treasurer of the board shall keep a registry in which shall be entered the names of all persons to whom license certificates have been granted under this chapter, the numbers of such license certificates, the dates of granting the same and other matters of records, and he shall keep a true and correct copy of the minutes of all board meetings, and the book so provided and kept shall be the official book of records. A photostatic copy of said records or a copy of said records certified by the secretary-treasurer and under the seal of the board shall be admitted in any of the courts of this state as prima facie evidence of the facts contained in said records and in lieu of the original thereof. A certificate under the hand of the secretary-treasurer and the seal of the board that there is not entered in such record books the name and number of and date of granting such license certificate to a person charged with a violation of any of the provisions of this chapter shall be prima facie evidence of the facts contained therein. Such certificates shall be admitted in any of the courts of this state in lieu of the records of the board. The original books, records and papers of the board shall be kept at the office of the secretary-treasurer of the board, which office shall be at such place as may be designated by the board.

(Acts 1959, No. 100, p. 569, § 6; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1.)

§ 34-9-45. Board to assist prosecuting officers.

Current through End of 2003 Organizational Session

The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members and officers to furnish the proper prosecuting officers with such evidence as it or they may ascertain to assist them in the prosecution of any violation of this chapter, and the board is authorized for such purposes to make such reasonable expenditures from the funds of the board as it may deem necessary to ascertain and furnish such evidence.

(Acts 1959, No. 100, p. 569, § 28.)

§ 34-9-46. Subpoenas and testimony.

Current through End of 2003 Organizational Session

In all matters pending before it, the board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials or other evidence. Any person failing or refusing to appear or testify regarding any matter about which he may be lawfully questioned or to produce any papers, books, records, documentary evidence or materials or other evidence in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so, may, upon application by the board to any circuit judge of the State of Alabama, be ordered to comply therewith; and, upon failure to comply with the order of said circuit judge, the said court may compel obedience by attachment as for contempt as in case of disobedience of a similar order or subpoena issued by said court. The president and secretary-treasurer of the board shall have authority to issue subpoenas, and any board member shall have authority to administer oaths to witnesses, or to take their affirmation. A subpoena or other process of paper may be served upon any person named therein, anywhere within the State of Alabama with the same fees and mileage by any officer authorized to serve subpoenas or such other process or paper in civil actions, in the same manner as is prescribed by law for subpoenas issued out of the circuit courts of this state, said fees and mileage and other costs to be paid as the board directs.

(Acts 1959, No. 100, p. 569, § 32.)

§ 34-9-47. Taking of depositions.

Current through End of 2003 Organizational Session

Depositions may be taken within or without the State of Alabama in the manner provided for by the laws of Alabama and the Alabama Rules of Civil Procedure for the taking of depositions in matters pending in the circuit courts of this state. Said depositions shall be returnable to the clerk of the circuit court of the county wherein said hearing before the board is pending, and said clerk shall deliver said depositions to the board upon request, and said depositions may be opened or used by the parties to said proceedings the same as is provided for in matters pending before the circuit courts. The circuit court shall, upon request of any interested party in any proceedings before the state board, issue commissions for the taking of depositions in the same manner as is provided for the issuance of commissions for the taking of depositions in matters pending before the circuit courts of this state.

(Acts 1959, No. 100, p. 569, § 33.)

ARTICLE 3. USE OF ANESTHESIA BY DENTISTS.

§ 34-9-60. Use of local anesthesia; permit to use general anesthesia.

Current through End of 2003 Organizational Session

Any person licensed to practice dentistry in the State of Alabama shall be authorized to use anesthesia in accordance with the provisions of this section.

(1) All dentists are authorized to use local anesthesia.

(2) Twelve months after May 29, 1985, no dentist shall use general anesthesia on an outpatient basis for dental patients, unless such dentist possesses a permit of authorization issued by the Board of Dental Examiners.

a. In order to receive such permit, the dentist must apply on a prescribed

application form to the Board of Dental Examiners, submit an application fee to be determined by the Board of Dental Examiners not to exceed \$750 and produce evidence showing that he or she:

1. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the guidelines for teaching the comprehensive control of pain and anxiety in dentistry; or
2. Is a diplomate of the American Board of Oral and Maxillofacial Surgery, or is eligible for examination by the American Board of Oral and Maxillofacial Surgery, or is a member of the American Association of Oral and Maxillofacial Surgeons; or
3. Employs or works in conjunction with a qualified medical doctor who is a member of the anesthesiology staff in an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic regains consciousness and is discharged; and
4. Has a properly equipped facility for the administration of general anesthesia staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team shall be determined by the Board of Dental Examiners as outlined below.

b. Prior to the issuance of such permit, the Board of Dental Examiners, at its discretion, may require an on-site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. This evaluation shall be carried out in a manner prescribed by the board. The evaluation shall be conducted by a team of three examiners appointed by the Board of Dental Examiners. These examiners shall be dentists who are authorized to administer general anesthesia.

If the results of the initial evaluation are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of examiners.

(3) Each dentist who is licensed to practice dentistry in the state on May 29, 1985, who desires to continue to use general anesthesia shall make application on the prescribed form to the Board of Dental Examiners within 12 months of May 29, 1985. If he meets the requirements of this section, he shall be issued such a permit. If said applicant does not meet the requirements of paragraph a. of subdivision (2) of this section, he may be entitled to a "general anesthesia permit" provided said applicant passes to the satisfaction of the board an on-site inspection as provided for in paragraph b. of subdivision (2) of this section.

(4) Each dentist who has not been using general anesthesia prior to May 29, 1985, may be granted by the board a temporary provisional permit based on the applicant's producing evidence that he or she has complied with paragraph a. of subdivision (2) of this section above pending complete processing of the application and thorough investigation of an on-site evaluation as described in paragraph b. of subdivision (2) of this section.

(Acts 1985, No. 85-697, p. 1120, § 2, Acts 1988, 1st Ex. Sess. No. 88-854, p. 327, § 1.)

§ 34-9-61. Annual review of permit; annual renewal; fee; reevaluation of credentials and facility.

Current through End of 2003 Organizational Session

(a) Any dentist holding a permit of authorization issued by the Board of Dental Examiners shall be subject to review and such permit must be renewed annually.

(b) The board shall, with fee to be determined by the board not to exceed \$200, renew the general anesthesia permit annually unless the holder is informed in writing that a reevaluation of his credentials and facility is to be required. In determining whether such reevaluation is necessary, the board shall consider such factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. Such reevaluation shall be carried out in the manner described in paragraph b. of subdivision (2) of Section 34-9-60.

(Acts 1985, No. 85-697, p. 1120, § 3; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1.)

§ 34-9-62. Certification in cardiopulmonary resuscitation.

Current through End of 2003 Organizational Session

Any dentist using general anesthesia, and his auxiliary personnel shall be currently certified in cardiopulmonary resuscitation.

(Acts 1985, No. 85-697, p. 1120, § 4.)

§ 34-9-63. Permit to use parenteral sedation.

Current through End of 2003 Organizational Session

The issuance of a permit for general anesthesia shall include the privilege of administering parenteral sedation in accordance with this section. The issuance of a permit for parenteral sedation shall include the privilege of administering intravenous sedation. All current intravenous sedation permit holders are entitled to a parenteral sedation permit subject to the renewal and regulatory provisions afforded to the Board of Dental Examiners by this chapter. The term parenteral sedation shall not include the use or regulation of nitrous oxide.

(1) After August 1, 1993, no dentist shall use parenteral sedation on an outpatient basis for dental patients unless the dentist possesses a permit of authorization issued by the board. The dentist applying for or holding the permit shall be subject to on-site inspections as provided in paragraph b. of subdivision (2) of Section 34-9-60.

a. In order to receive the permit, the dentist shall:

1. Apply on a prescribed application form to the board.
2. Submit a fee to be determined by the board not to exceed \$750.
3. Produce evidence showing that he or she has satisfied each of the

following requirements:

(i) Received formal training in the use of parenteral sedation from a board approved training program, is competent to handle all emergencies relating to parenteral sedation, and is currently certified in cardiopulmonary resuscitation. The certification of the formal training shall specify the total number of hours, the number of didactic hours, and the number of patient contact hours. The required number of didactic hours and patient contact hours shall be determined by the board.

(ii) Equipped a proper facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems, and

emergencies incident to the sedation procedure.

b. Adequacy of the facility and the competency of the sedation team shall be determined by the board.

c. Prior to the issuance of a permit, the board may require an on-site inspection of the facility, equipment, and personnel to determine if, the requirements of this section have been met. This evaluation shall be performed as provided in subdivision (2) of this section.

(2) Each dentist who is licensed to practice dentistry in the state on or after August 1, 1993, who desires to continue to use parenteral sedation shall make application on the prescribed form to the board within 12 months of August 1, 1993. If he or she meets the requirements of this section, or currently holds a valid intravenous sedation permit, he or she shall be issued such a permit subject to all renewal and regulatory requirements of Section 34-9-64. If the applicant does not meet the requirements of paragraph a. of subdivision (1) of this section, or does not currently hold a valid intravenous sedation permit, he or she may be entitled to a "parenteral sedation permit" if the applicant passes, to the satisfaction of the board, an on-site inspection. The inspection shall ascertain that the dentist has a properly equipped facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with incidental procedures, problems, and emergencies.

The board, in conducting the on-site inspection and evaluations required in this section, shall appoint a team of three examiners who shall be dentists certified to administer parenteral sedation in accordance with this article.

(3) A dentist utilizing parenteral sedation and the auxiliary personnel of the dentist shall be currently certified in cardiopulmonary resuscitation.

(4) Each dentist who has not been using parenteral sedation prior to August 1, 1993, may, pending complete processing of an application and a thorough on-site evaluation, be granted a temporary provisional permit by the board, if the applicant produces evidence that he or she has complied with this section.

(Acts 1985, No. 85-697, p. 1120, § 5; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-64. Annual renewal of parenteral sedation permit; reevaluation of credentials and facility; fee.

Current through End of 2003 Organizational Session

The board shall renew the parenteral sedation permit annually, unless the holder is informed in writing that a reevaluation of his or her credentials and facility is necessary. In determining whether the reevaluation is necessary, the board shall consider any factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. The reevaluation shall be performed as provided in paragraph b. of subdivision (2) of Section 34-9-60. The board shall set the fee to renew a parenteral sedation permit in an amount not to exceed \$750.

(Acts 1985, No. 85-697, p. 1120, § 6; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-65. Reports of mortalities and other incidents resulting from general anesthesia or sedation.

Current through End of 2003 Organizational Session

(a) All licensees engaged in the practice of dentistry in the state must submit a complete report within a period of 30 days to the Board of Dental Examiners of any mortality or other incident occurring in the outpatient facilities of such dentist which results in permanent physical or mental injury of said patient as a direct result of general anesthesia or sedation techniques.

(b) The Board of Dental Examiners shall have authority to adopt rules and regulations implementing and enforcing the provisions of this section.

(c) Violation of any provision of this section shall subject the dentist to the penalties outlined in Section 34-9-18 and no order imposing those penalties shall be made or entered except after notice and hearing by the board as provided in Chapter 9, Title 34. Such order shall be subject to judicial review as provided by such chapter.

(Acts 1985, No. 85-697, p. 1120, § 7.)

Title 34 Chapter 38. Impaired Professionals' Committee.

§ 34-38-1. Definitions.

Current through End of 2003 Organizational Session

For the purposes of this chapter, the following terms shall have the meaning respectively ascribed to them by this section, unless the context clearly provides for another:

(1) Dentist. Any person who is a dentist or dental practitioner pursuant to the definition of Section 6-5-481, as amended.

(2) Pharmacist. Any person who is a pharmacist as defined in Section 34-23-1, as amended, and pharmacy externs and interns registered by the Board of Pharmacy under Rule 680-X-2-.16 of the Alabama Administrative Code.

(3) Boards. Individually and/or jointly: The Board of Dental Examiners and the Board of Pharmacy.

(4) Committee. The Alabama Impaired Professionals' Committee.

(5) Hygienist. Any person who is a hygienist pursuant to the provisions of Sections 34-9-26 and 34-9-27.

(Acts 1988, No. 88-334, p. 505, § 1; Acts 1989, No. 89-860, p. 1713, § 1.)

§ 34-38-2. Duty of Board of Dental Examiners and Board of Pharmacy to promote early treatment, etc., of individuals impaired by illness, inebriation, etc.; Alabama Impaired Professionals' Committee; expenses; competitive bidding not required.

Current through End of 2003 Organizational Session

It shall be the duty and obligation of the State Board of Dental Examiners and the State Board of Pharmacy to promote the early identification, intervention, treatment and rehabilitation of individuals within the respective jurisdiction, licensed to practice in the State of Alabama, who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. For the purposes of this chapter, the term "impaired" shall mean the inability of a dentist, hygienist or pharmacist to practice with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. In order to carry out this obligation, each board, individually or jointly, is hereby empowered to contract with any nonprofit corporation, health provider or professional association for the purpose of creating, supporting and maintaining a committee of professionals to be designated the Alabama Impaired Professionals' Committee. The committee shall consist of not less than three nor more than 15 professionals licensed to practice dentistry or pharmacy in the State of Alabama, and selected in a manner prescribed by the board or boards. The authority of the Alabama Impaired Professionals' Committee shall not supersede the authority of the board or boards to take disciplinary action against individuals subject to this chapter. Nothing in this chapter shall limit the power and authority of the board or boards to discipline an impaired individual subject to its jurisdiction; provided that where an individual is impaired and currently in need of intervention, treatment or rehabilitation and such individual is currently participating in

programs or rehabilitation recommended by the committee, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual; and further provided that where the board or boards, upon reasonable cause to believe an individual subject to its jurisdiction is impaired, has referred such individual to the committee for evaluation, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual. The board, or boards, is authorized to expend such funds as are available to it as deemed necessary to adequately provide for the operational expenses of the Alabama Impaired Professionals' Committee, including, but not limited to, the actual cost of travel, office overhead and personnel expense and compensation for the members of the committee and its staff; provided that operational expenses of the Alabama Impaired Professionals' Committee shall not include the cost of treatment or rehabilitation programs recommended by the committee to individuals subject to this chapter. The funds provided by the board or boards, under this section for the purposes stated herein shall not be subject to any provision of law requiring competitive bidding.

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 2.)

§ 34-38-3. Authority of board or boards to contract for Impaired Professionals' Committee to undertake certain functions.

Current through End of 2003 Organizational Session

The board or boards shall have the authority to enter into an agreement with a nonprofit corporation, health provider or professional association for the Alabama Impaired Professionals' Committee to undertake those functions and responsibilities specified in the agreement. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired professional to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired professional;
- (6) Providing post-treatment monitoring and support of rehabilitated impaired professional; and
- (7) Performing such other activities as agreed upon by the respective board or boards and the Alabama Impaired Professionals' Committee.

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-4. Procedures for reporting impaired professional program activity and disclosure and joint review of information.

Current through End of 2003 Organizational Session

The Alabama Impaired Professionals' Committee shall develop procedures in consultation with such board or boards for:

- (1) Periodic reporting of statistical information regarding impaired professional program activity;
- (2) Periodic disclosure and joint review of such information as the board or boards may deem appropriate regarding reports received, contracts or investigations made and the disposition of each report, provided, however, that the committee shall not disclose any personally identifiable information except as provided in Section 34-38-7.

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-5. Nonliability of Impaired Professionals' Committee personnel, etc., for actions within scope of function.

Current through End of 2003 Organizational Session

Any dentist licensed to practice in the State of Alabama, or pharmacist, who shall be duly appointed to serve as a member of the Alabama Impaired Professionals' Committee and any auxiliary personnel, consultants, attorneys, or other employees of the committee shall not be liable to any person for any claim for damages as a result of any decision, opinion, investigation or action taken by the committee or any individual member of the committee made by him within the scope of his function as a member of the committee if such decision, opinion, investigation or action was taken without malice and on a reasonable belief that such action or recommendation was warranted by the facts that were then available. No nonprofit corporation, professional association, health provider or state or county association that contracts with, or receives funds from, board or boards for the creation, support and operation of the Alabama Impaired Professionals' Committee shall be liable to any person for any claim for damages for any action taken or recommendation made by the Alabama Impaired Professionals' Committee, or any member thereof, or any auxiliary personnel, consultant, attorney, or employee of such committee.

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-6. Confidentiality of information, records and proceedings.

Current through End of 2003 Organizational Session

All information, interviews, reports, statements, memorandums, or other documents furnished to or produced by the Alabama Impaired Professionals' Committee and any findings, conclusions, recommendations or reports resulting from the investigations, interventions, treatment or rehabilitation, or other related proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee, the members thereof and the boards, only in the exercise of the proper functions of the committee and the boards, and shall not be public records nor available for court subpoena or for discovery proceedings. Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Impaired Professionals' Committee.

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 3.)

§ 34-38-7. Annual report.

Current through End of 2003 Organizational Session

It shall be the duty of the Alabama Impaired Professionals' Committee to render an annual report to each board or boards, concerning the operations and proceedings of the committee for the preceding year. In addition, the committee shall promptly report to the respective boards any individual within their jurisdiction who, in the opinion of the committee is unable to practice the standards of his or her profession with reasonable skill and safety to patients, by reason of illness, inebriation, excessive use of drugs, controlled substances, narcotics, alcohol, chemicals or other dependency forming substances, or as a result of any physical or mental condition rendering such person

unable to meet the standards of his or her profession and appears that such individual is currently in need of intervention, treatment or rehabilitation. A report to the Alabama Impaired Professionals' Committee shall be deemed to be a report to the board or boards for the purposes of any mandated reporting of professional impairment otherwise provided for by the statutes of this state.

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 4.)

§ 34-38-8. Evaluation of professional who is believed to be impaired; report of findings.

Current through End of 2003 Organizational Session

If the board or boards has reasonable cause to believe that a professional is impaired, such board may cause an evaluation of such professional to be conducted by the Alabama Impaired Professionals' Committee, for the purpose of determining if there is an impairment. The Alabama Impaired Professionals' Committee shall report the findings of its evaluation to the respective board or boards.

(Acts 1988, No. 88-334, p. 505, § 2.)

Title 20 Chapter 2. Controlled Substances.

§ 20-2-2. Definitions.

Current through End of 2003 Organizational Session

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Administer. The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- a. A practitioner or, in his or her presence, his or her authorized agent.
- b. The patient or research subject at the direction and in the presence of the practitioner.

(2) Agent. An authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) Certifying boards. The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry, and the State Board of Veterinary Medical Examiners.

(4) Controlled substance. A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.

(5) Counterfeit substance. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) Deliver or delivery. The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(7) Dispense. To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) Dispenser. A practitioner who dispenses.

(9) Distribute. To deliver other than by administering or dispensing a controlled substance.

(10) Distributor. A person who distributes.

(11) Drug.

a. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.

b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals.

c. Substances (other than food) intended to affect the structure or any function of the body of man or animals.

d. Substances intended for use as a component of any article specified in paragraphs a, b, or c of this subdivision. Such term does not include devices or their components, parts, or accessories.

(12) Immediate precursor. A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) Manufacture. The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

b. By a practitioner or by his or her authorized agent under his or her supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(14) Marihuana. All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) Narcotic drug. Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) Opiate. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) Opium poppy. The plant of the species *Papaver somniferum* L., except its

seeds.

(18) Person. Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) Poppy straw. All parts, except the seeds, of the opium poppy, after mowing.

(20) Practitioner.

a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(21) Production. The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) State. When applied to a part of the United States, such term includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) Ultimate user. A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

(Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

ARTICLE 3. REGULATION OF MANUFACTURE AND DISTRIBUTION.

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.

Current through End of 2003 Organizational Session

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards.

(Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

§ 20-2-51. Registration of persons manufacturing, distributing or dispensing controlled substances -- General requirements.

Current through End of 2003 Organizational Session

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess,

manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

(Acts 1971, No. 1407, p. 2378, § 302.)

§ 20-2-52. Registration of persons manufacturing, distributing or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration.

Current through End of 2003 Organizational Session

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those

specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

(Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

§ 20-2-53. Registration of persons manufacturing, distributing or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay.

Current through End of 2003 Organizational Session

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying

board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board. (Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, § 3.)

§ 20-2-54. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure generally.

Current through End of 2003 Organizational Session

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesis.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.

5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.

6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;

or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, 3rd Sp. Sess., p. 873, § 2.)

§ 20-2-54.1. Rules and regulations.

Current through End of 2003 Organizational Session

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

§ 20-2-55. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause.

Current through End of 2003 Organizational Session

The certifying boards may suspend, without an order to show cause, any registration

simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction. (Acts 1971, No. 1407, p. 2378, § 305.)

§ 20-2-56. Maintenance of records and inventories by registrants generally.

Current through End of 2003 Organizational Session

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.

(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies.

Current through End of 2003 Organizational Session

(a) A pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a

prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1.)

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January 9, 2004

Examiners of Public Accounts
Attn: Billie Alabi
PO Box 302251
Montgomery, AL 36130-2251

Dear Ms. Alabi,

The following officials are the current board members:

Name	Address	Term	Position
S. M. Mahan DMD	PO Box 100 Brierfield, AL 35035	Oct. 15 1999- Sept. 30 2004	Pres – 2003-2004 Vice Pres. – 2002-2003 Sec.-Tres. – 2001-2002
J. Clyde Yarbrough DMD	2321 Whitesburg Drive Huntsville, AL 35801	Oct. 15 2000- Sept. 30 2005	Vice Pres. – 2003-2004 Sec.-Tres. – 2002-2003
Donald H. Busby DMD	134 1 st St. SE Lafayette, AL 36862	Oct. 15 2001- Sept. 30 2006	Sec.-Tres. – 2003-2004
Kathy L. Jefferson DDS	2112 14 th Ave. So. Birmingham, AL 35205	Oct. 15 2002- Sept. 30 2007	Member
Ronald W. Cater	526 Lakeview Estate Dr. Hueytown, AL 35023	Oct. 15 2003- Sept. 30 2008	Member
Sandra K. Alexander	106 Boyd Place Gadsden, AL 35906	Oct. 15 2000- Sept. 30 2005	Dental Hygiene Member

Sincerely,

S.M. Mahan D.M.D
President

S. M. MAHAN, Jr. D.M.D.
PRESIDENT
P. O. BOX 100
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October 12, 2004

John E. Norris
Director, Operational Division
State of Alabama
Department of Public Accounts

RE: Significant Items

Dear Mr. Norris:

Please let me know if you need additional information in response to your letter of September 24, 2004

Item 1. Excessive fee charged for licensure by credentials.

While the fee established by the Board of Dental Examiners of Alabama for licensure by credential (\$4,000.00 for a dentist; \$2,000 for a dental hygienist) may seem excessive, there was a succinct rational behind said establishment. In order to provide a "level financial playing field" for candidates wanting licensure in the State (whether by credentialing or by taking the annual examination), the following estimated costs were evaluated for a candidate seeking licensure by examination the estimated financial responsibility is as follows:

Testing fee (Dentist):	\$300.00	
Travel (candidates, 1 patient, 1 assistant):	\$750.00	
Lodging (4 nights) (candidates, 1 patient, 1 assistant):	\$1200.00	
Meals (5 days / 4 nights – candidate, 1 patient, 1 assistant):	\$800.00	
Tips (Airport, Hotel, Restaurants)	\$125.00	
Material fees	\$200.00	
License fee	\$ 25.00	
Controlled Substance fee	\$100.00	
Patient Compensation fee	<u>\$500.00</u>	
Approximate costs for dental candidate		\$4,000.00
Testing fee (dental hygienist)	\$200.00	
Travel (candidate, 1 patient)	\$500.00	
Lodging (candidate, 1 patient) (3 days / 2 nights)	\$400.00	
Meals (candidate, 1 patient) (3 days / 2 nights)	\$400.00	
Tips:	\$ 75.00	
Material fees:	\$150.00	
License Certification fee:	\$25.00	
Patient Compensation fee:	\$300.00	
Approximate costs for dental hygiene candidate		\$2000.00

The above figures are approximations and may be under estimated if the candidate enlists the aid of a spouse, or brings / retains a "spare" patient in the event the primary patient does not meet examination criteria. The Board of

Dental Examiners of Alabama feels the fiduciary responsibility of candidates seeking initial licensure within the state should be equitable, thus the establishment of the aforementioned fee structure for those candidates seeking the licensure by credentials pathway.

Also, the credentialing process requires an extensive background check requiring the Board and its personnel to review more detailed and voluminous information than with the examination pathway. While the fee for the background check is paid by the applicant, the Board must thoroughly review the PBIS material and make inquiries concerning discrepancies. Additionally, the Board almost always interviews the credentialing applicant. Obviously, these expanded activities increase time and expense for which the Board is entitled to recoup. Finally, there has been no complaint about the size of the fee from credentialing applicants.

No Item 2 was listed.

Item 3. The board is collecting less than the statutory minimum for two fees provided by law.

The “undercharging” of fees by the Board of Dental Examiners of Alabama is duly noted, and future fee collections will be as specified by the Code of Alabama, (1975) § 34-9-16. Furthermore, the Board will evaluate and edit its Rules to eliminate redundancy/ inaccuracy.

Item 4. The board did not have adequate policies and procedures in effect to ensure compliance with state laws and regulations governing personnel matters.

While no justification, some of these items were not criticized during previous audits. The Board will in the future base their policies on the standards recognized in this audit unless informed to the contrary. The Board apologizes for the inconsistencies noted.

Leave Accrued by employees who had not been in pay status long enough to accrue leave.

The Board’s pay period ends on the 15th and 30th. The State is on a bi-weekly period, therefore our pay periods do not perfectly correspond. An employee who started at the first of the Board pay period was found to not be in pay status 80% of the time as a result of beginning in the middle of the state period and therefore would not be eligible to accrue leave. At Ms. Alabi’s direction the leave balances will be corrected to subtract the hours in which the employee was not entitled.

Two employees were accruing annual leave at a higher rate than they were eligible for.

Although the Board recognized the previous years service and experience with other state entities at the time of hire, the findings of this report indicates that the Board does not have the option to allow the transfer of time therefore the annual leave balances for the two employees, Ms. Wilkinson and Mr. Zarzour, have been reduced to 4 hours of annual leave per bi-weekly state period once this error was identified. At Ms. Alabi’s direction the leave balances will be corrected to subtract the hours in which the employees were not entitled.

Another employee who was due for an increase in the rate of leave accumulation did not receive the increase. Inadvertently, the anniversary date of Mr. McAdams hire date was overlooked and the change in the accumulation of annual leave was not recognized. At Ms. Alabi’s direction the leave balance for Mr. McAdams will be corrected.

Longevity payments were made to employees who had not met the minimum service requirements. Payments were also made in amounts that were not correct for the length of time served.

Ms. Wilkinson, based on the previously stated incorrect assumption that the Board had granted the transfer of time of five years, was considered eligible for longevity. Based on this finding, the overpayments for 2001, 2002 and 2003 will be repaid by the employee.

Ms. Barrett, based on information from the Training Manual for Alabama Regulatory Boards and Commissions, Third Edition – August 12, 2003, through an interpretation error of the provisions stated on page 27, Ms. Barrett was incorrectly issued longevity pay in 2003. Based on this finding, the overpayment for 2003 will be repaid by the employee.

Through Ms. Alabi’s notification, it was determined that Mr. McAdams service time indicated that he was under paid one year and over paid one year, therefore it was my understanding that the errors balanced and no repayment of funds is required. A schedule for longevity payments has been supplied to assure future payments are correct.

Sick leave accumulated in former employment was improperly added to an employee's leave balance.
Although the Board discussed recognizing the sick leave accumulated during previous service with other state entities at the time of hire, on notification that this is not the Board's option to grant, the sick leave balances for Ms. Wilkinson has been corrected to remove the sick time that was transferred from the previous employer. At Ms. Alabi's direction the leave balance will be corrected to subtract the hours in which the employee was not entitled.

The board granted an additional six weeks of paid maternity leave for one employee.

The minutes of October 4, 2002 minutes state the Board passed a motion to grant maternity leave with full benefits to Ms. Barrett. Ms. Barrett did not accumulate leave time during this period, and was off from February 24, 2003 returning to work on March 31, 2003. On notification that the Board did not have the right to grant this benefit, the leave balance will be corrected with notification of this finding. At the direction of Ms. Alabai, the leave balance will be adjusted to deduct the hour from Ms. Barrett's sick and annual leave balances to account for the hours on maternity leave.

(Second) Item 4. There was no evidence that the board is ensuring that its investigators are peace officers.
These records are maintained by APOSTC and therefore, the Board did not understand verification or file was required. The Board will in the future require the applicable employees to document their compliance and maintain this record in their file. Mr. Peyton Zarzour, Board Investigator, has confirmed with APOSTC that both he and Mr. McAdams are compliant and will maintain records to support that the Investigators are compliant with the Peace Officers' Minimum Standards Training Act.

Item 5. Bank statements were not in balance with the board's accounting records.

The firm of Hewlett, Kellum and McKinney, PC has completed and financial audit for this time period and is working to respond to this finding. These conclusions will be submitted

Item 6. The board is improperly administering its employee pension plan.

The board with the assistance of Hewlett, Kellum and McKinney, PC will construct an employee document to assure the Simplified Employee Pension meets all restrictions and requirements. If desired, the Board will gladly submit the plan once completed.

Please let me know if I can be of further assistance.

Sincerely,



Mary Ann Wilkinson, RDH
Administrative Secretary